ACCEPTED
05-19-00607-CV
FIFTH COURT OF APPEALS
DALLAS, TEXAS
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LISA MATZ
CLERK

No. 05-19-00607-CV

In the Court of Appeals
For the Fifth Court of Appeals District
Dallas Texas

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
09/10/2019 3:53:08 PM
LISA MATZ
Clerk

Peter Beasley,

Plaintiff – Appellant,

v.

Society of Information Management,
Dallas Area Chapter, et. al.

Defendants – Appellees

Appeal from the 191st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-18-05278
The Honorable Judge Gena Slaughter

APPELLANT'S 1st AMENDED BRIEF ON THE MERITS

Peter Beasley, *pro se*
P.O. Box 831359
Richardson, TX 75083
(972) 365-1170

ORAL ARGUMENT REQUESTED

I. IDENTITIES OF PARTIES

1. Appellant - Plaintiff is PETER BEASLEY, a resident of Dallas County, Texas. Mr. Beasley is appearing *pro se* before this court.

2. Appellee – the primary Defendant is the SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, ("SIM-DFW"), a Texas Corporation.

3. Appellees SIM Dallas, Janis O'Bryan, and Nellson Burns are represented by Robert Bragalone and Soña Garcia of Gordon Rees Scully Mansukhani, 2200 Ross Avenue, Suite 4100, Dallas, TX 75201-2708, and by Peter Vogel of Foley Gardere LLP, 2021 McKinney Ave. Ste. 1600, Dallas, TX 75201.

II. TABLE OF CONTENTS

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IV. STATEMENT OF THE CASE

Beasley, as amended, filed Breach of Contract, Fraudulent Inducement, Defamation, Tortuous Interference, Declaratory Judgment, Due Process, and Injunctive causes of actions[1]. On December 11, 2018, the court entered a Prefiling Order[2] under the Texas Vexatious Litigant statute – the judgment under appeal. On June 11, 2019, the court entered a 2nd final judgment, dismissing the case. A motion for new trial was filed July 11, 2019.

V. STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested to help simplify the facts.

VI. NOTICE OF APPEAL UNDER RULE 34.6(c)

May 28, 2019, as supplemented May 30, 2019, and August 22, 2019, Beasley gave notice of an appeal under Rule 34.6 (c)[3]. Tex. R. App. P. 34.6(c). *see*, *Bennett v. Cochran*, 96 S.W.3d 227 (Tex. 2002) (per curiam).

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[1] C.R. 629 - 648. App. Tab B, p. A3.
[2] C.R. 1,259 – 1,260, App. Tab A, p. A1.
[3] C.R. 1345-1348, Supp. C.R. 127-128, Supp. C.R. 307-309

VII. THREE ISSUES PRESENTED

1. May a Prefiling Order stand against a litigant when defendants provided insufficient evidence to declare anyone a vexatious litigant, and when their motion was filed too late?

2. Must properly filed Rule 12 challenges and motions to disqualify counsel be allowed at some time during the proceedings, and should those contests be heard promptly?

3. Does this expansive record, including an admission from another judge, support a rare determination that the trial judge was disqualified under the Due Process Clause of the U.S. Constitution from entering the Prefiling Order?

VIII. STATEMENT OF FACTS[4]

The earlier non-suited lawsuit

Beasley, *pro se*, sued SIM-DFW on March 17, 2016 lawsuit[5] , in No. DC-16-03141, in the 162nd District Court of Dallas County. Beasley was a Director, the first African-American, for SIM-DFW, a Texas, non-profit for senior information technology (IT) professionals[6]. January 2017, the Honorable Judge Maricella Moore was the newly elected presiding judge.

Eleven months after the lawsuit was filed, defendants counter-sued Beasley, February 21, 2017, to have him declared a vexatious litigant under the Declaratory Judgment Act;[7] however the Vexatious Litigant statute requires a claim be filed within 90 days. Defendants moved to dismiss Beasley's lawsuit by summary judgment[8], but defendants ultimately withdrew this claim[9] at the MSJ hearing July 17, 2017.

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[4] Citations to the Reporter's Records in this brief will identify the hearing date, filing date with this court, page:line numbers.

[5] C.R. 181

[6] C.R. 182

[7] Supp. C.R. 27 - 44

[8] C.R. 1,234

[9] *MR. BRAGALONE:* I'm just saying, we withdrew the motion because we didn't get it filed within 90 days. C.R. 358, ln. 23

At the 2017 MSJ hearing, Judge Moore advised defendants[10]:

THE COURT: Let's say this lawsuit goes away in one form or fashion and your client is concerned well, Mr. Beasley is going to go ahead and just sue us again. Immediately upon filing that lawsuit guess what motion you should file?

MR. BRAGALONE: This one within 90 days.

Beasley's and Intervener's original lawsuit against defendants did go away, by nonsuit, October 5, 2017[11]. Post-nonsuit, Judge Moore entered an order[12] that Beasley pay defendants' attorney fees of $211,032. The Texas Supreme Court has accepted review of that order, pending briefing[13].

October 31, 2017, Judge Moore further advised defendants[14]:

THE COURT: Look at the vexatious litigant statute. It's not only -- there's -- there's different ways of declaring someone a vexatious litigant. One is when they've filed I think it's five lawsuits in two years. I don't have it in front of me.

There's another mechanism where someone is vexatious with respect to a particular party. Read that statute that. And that perhaps is the mechanism that needs to be taken advantage of.

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[10] C.R. 1,251
[11] C.R. 843
[12] C.R. 214
[13] No. 19-0041, filed by attorney Chad Baruch August 5, 2019. Supp. C.R. 341.
[14] C.R. 342, ln 15 – 22

The second lawsuit – the underlying judgments

How it became filed in Dallas County

Beasley did sue the same three defendants again, but in Collin County[15] on November 30, 2017, No. 296-05741-2017[16]. The top count was SIM-DFW's failure to provide Beasley defense insurance coverage under the Directors and Officer's insurance provisions in the earlier lawsuit. (more on this to come).

Beasley sued the individual defendants on a derivative action on behalf of SIM-DFW[17]. Tort claims against the corporate defendant, SIM-DFW, included fraudulent inducement, breach of contract, defamation, and tortious interference[17]. Beasley also sued SIM DFW for a declaratory judgment, which included claims:

- To declare his expulsion as being void,
- To declare actions by SIM DFW subsequent to Beasley's expulsion are void,

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[15] The suit was filed in the 417th District Court, who recused herself and the case was transferred to the 296th.

[16] C.R. 1362

[17] C.R. 629 – 648, Tab B, p. A3 – A22.

- To declare SIM DFW's actions to give-away significant amounts of members' assets to non-members, under the guise of philanthropy, was against the bylaws[18]

All three defendants responded to the lawsuit by filing a Motion to Transfer Venue on January 16, 2018[19]. Their pleading includes "Peter Beasley is a vexatious litigant[20]" and prayed that "Peter Beasley take nothing by way of his claims.[21]"

Beasley responded with a Rule 12 motion challenging the attorneys to defend the lawsuit[22], and moved to disqualify them for various reasons, including conflicts of interest and that the Board of Directors had never authorized retaining these lawyers.

March 2, 2018, defendant Burns, as a counter-plaintiff, sued Beasley a counter-defendant, for defamation[23] and SIM DFW, as a counter-plaintiff, sued Beasley, a counter-defendant, for declaratory judgment relief with claims directly counter to Beasley's that:

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[18] C.R. 641 - 642
[19] C.R. 22 - 628
[20] C.R. 29
[21] C.R. 32
[22] C.R. 45
[23] C.R. 649. Tab F. p. A70 – 81.

- Beasley's April 19, 2016 expulsion from SIM-DFW was consistent with SIM-DFW's Bylaws
- The actions after Beasley's expulsion are valid, and do not require Beasley's ratification,
- SIM DFW's philanthropy efforts are consistent with the bylaws and articles of incorporation

Beasley set his attorney challenge motions for hearing, but rather than hear the motion challenging defense counsel, on April 3, 2018, the 296th District Court of Collin County determined the venue issue needed to be determined first[24], and ordered the lawsuit be transferred to Dallas County – *in 30 days*[25]. Defendants prepared that order to transfer the case directly to Judge Moore, but Judge Roach stuck that condition.

April 18, 2018, Defendants moved to expedite the transfer, and without a hearing, Judge Roach transferred the lawsuit immediately[26]. To advance their counter-claims and to have the lawsuit filed in Dallas

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[24] R.R. 04/03/2018; filed 08/30/19; pg. 5:4 - 10
[25] C.R. 661
[26] C.R. 662

County, defendant Burns paid the $123.00 copy / transfer fee on April 18, 2018, in Collin County[27] and defendant SIM-DFW paid the $292.00 Dallas County filing fee on April 19, 2018[28]. Rules of the Clerks of both Collin[29] and Dallas County[30] require those fees are to be paid by the plaintiff.

The Collin County court transferred the controversy on April 18, 2018, to Dallas County[31]. The lawsuit landed in the 44th District Court. The "new case filed" on April 19, 2018, is DC-18-05278[32].

The Vexatious Litigant Motion

That day, which was 93 days after their first pleading was filed, all three defendants, *through their purported attorneys*, filed a Motion to Declare Peter Beasley a vexatious litigant in Dallas County[33]. Defendants supplemented their motion twice, with the combined motions identifying the following prior litigations.

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[27] C.R. 1367
[28] C.R. 21
[29] C.R. 1357 - 1358
[30] C.R. 1359, Tab G, p. A82.
[31] C.R. 662
[32] C.R. 6
[33] C.R. 663 - 989

No.	Style, Number, Court, Judgment Date, Causes	Resolution
#1.[34]	*#1. Peter Beasley v. Susan M. Coleman; Randall C. Romei*, Case No. 1:13cv1718 in the USDC Northern District of Illinois. February 21, 2014. 42 U.S.C. §§ 1983, 1985, and 1986 conspiracy against rights and attorney malpractice claims.	Dismissed for want of subject matter jurisdiction; malpractice claim remanded to state court Probate Exception to federal jurisdiction
#2.[35]	*Peter Beasley v. John Krafcisin; John Bransfield; Ana-Marie Downs; Hanover Insurance Company*, Case No. 3:13cv4972 in the USDC Northern District of Texas. September 17, 2014. 42 U.S.C. §§ 1983, 1985, and 1986 conspiracy against rights and declaratory judgment claims.	Dismissed for want of subject matter jurisdiction Younger abstention to federal jurisdiction and improper venue.
#3.[36]	*Peter Beasley v. Seabrum Richardson and Lamont Aldridge,* Cause No. DC-13-13433 in the 192nd Judicial District Court of Dallas County, Texas. June 12, 2015. Breach of contract.	Voluntary nonsuit. Dismissed, with prejudice.
#4.[37]	*In re: Peter Beasley*, No. 05-15-00276, Texas Fifth Court of Appeals. March 19, 2015. Mandamus, original proceeding.	Petition denied, without any prejudice
#5.[38]	*Peter Beasley v. Society for Information Management,* Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, Texas. *Not yet finally determined.* Declaratory judgment, due process, business disparagement, and tortious interference claims.	Voluntary nonsuit – dismissed without prejudice, October 9, 2017. Attorney fee award currently under appeal with the Texas Supreme Court, No. 19-0041.

[34] C.R. 679, ¶ B1., C.R. 1019
[35] C.R. 680, ¶ B2., C.R. 1020
[36] C.R. 680, ¶ B3., C.R. 1029
[37] C.R. 680, ¶ B4., C.R. 1030
[38] C.R. 680, ¶ B5., C.R. 1032

#6.[39]	*In re: Peter Beasley,* No. 05-17-01365-CV, Texas Fifth Court of Appeals. December 11, 2017. Mandamus, original proceeding.	Petition denied, without any prejudice
#7.[40]	*In re: Peter Beasley,* No. 17-1032, Supreme Court of January 26, 2018. Mandamus, original proceeding.	Petition denied, without any prejudice
#8.[41]	*In re: Peter Beasley*, No. 05-18-00382-CV, Texas Fifth Court of Appeals, filed on May 8, 2018. Mandamus, original proceeding.	Petition denied, without any prejudice
#9.[42]	*In re: Peter Beasley II,* No. 05-18-00395-CV, Texas Fifth Court of Appeals. April 24, 2018. Mandamus, original proceeding.	Petition denied, without any prejudice
#10.[43]	*In re: Peter Beasley III*, No. 05-18-00553-CV, Texas Fifth Court of Appeals. May 22, 2018. Mandamus, original proceeding.	Petition denied, without any prejudice
#11.[44]	*In re: Peter Beasley IV,* No. 05-18-00559-CV. Texas Fifth Court of Appeals. May 22, 2018. Mandamus, original proceeding.	Petition denied, without any prejudice

[39] C.R. 680, ¶ B6., C.R. 761
[40] C.R. 680, ¶ B7., C.R. 763
[41] C.R. 1002, ¶ 1., C.R. 1010
[42] C.R. 1002, ¶ 2., C.R. 1015
[43] C.R. 1044, ¶ 1., C.R. 1048
[44] C.R. 1044, ¶ 2., C.R. 1054

Beasley responded to defendants' motion with several defenses[45], including that 1) Defendants would be unable to show Beasley had no probability to prevail in all of his claims[46], 2) he did not file the lawsuit in Dallas County[47], 3) defendants' motion was late filed[48], 4) that no sufficient failed judgments were commenced, prosecuted or maintained as a *pro se* litigant, finally determined adverse before the filing of the motion existed[49,50] and 5) the Vexatious Litigant statute was vague, and unconstitutionally overbroad[51].

During the automatic stay, defendants moved to transfer the lawsuit from the 44th District Court to the 162nd District Court, and Beasley moved to recuse Judge Moore[52]. While under challenge by the recusal motion, Judge Moore set the vexatious litigant motion to be heard by her on August 13, 2018 – the day after the recusal contest was scheduled to be heard[53].

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[45] C.R. 1057 – 1085, Tab D, p. A38 – A66
[46] C.R. 1061, Tab D, p. A42
[47] C.R. 1063, Tab D, p. A44.
[48] C.R. 1061 – 1063, Tab D, p. A42 – A44.
[49] C.R. 1070
[50] C.R. 1063
[51] C.R. 1065 – 1067, Tab D, p. A46 – A48
[52] Supp. C.R. 80 – 86
[53] R.R. 08/10/2018; 09/03/2019; 65:16 – 25

Pro se, in a contested hearing on August 10, 2018, the Regional Presiding Administrative Judge, the Honorable Ray Wheless granted Beasley's motion and recused Judge Moore. August 14, 2018, the lawsuit was transferred to the 191st District Court of Dallas County, the Honorable Gena Slaughter presiding[54].

The Vexatious Litigant Motion Hearing

On September 19, the day before the vexatious litigant hearing, The Hartford insurance company who was paying the defense for SIM DFW contacted Beasley to provide him a lawyer[55] – providing Beasley the legal help he was suing defendants to provide. The morning of September 20th hearing, the Rogge Dunn Group law firm was retained by The Hartford to represent Beasley 1) in defense of the counter-claims, but also 2) to represent Beasley's affirmative claims—removing Beasley as his own lawyer[56].

The September 20, 2018, hearing included defendants' vexatious litigant motion[57], but also Beasley's Rule 12 challenge, a motion to

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[54] C.R. 1088
[55] Supp. C.R. 140, ¶ 9
[56] Supp. C.R. 157
[57] RR.1 09/20/18 hearing, filed 05/28/19

disqualify defense counsel, a motion to request an order of mediation, and a motion for Rule 13 sanctions against defendants for filing the vexatious litigant motion, it being groundless[58].

Beasley's lawyer asked for an order of mediation and a 30 to 60 day abatement, because he had been retained that morning, but he did not file a motion for a continuance[59]. He advanced the Motion for Mediation, and asked the court to abate the proceedings. The judge acknowledged that having an attorney rather than a *pro se* litigant typically streamlines the process[60]. The judge further acknowledged to defendants:

> THE Court: … well, we have motions to disqualify and show authority, and *usually those come first* but, obviously, I think, you're right, the vexatious litigant has come first.[61]

and denied a hearing to Beasley on his motion for mediation, for Rule 13 sanctions, for attorney disqualification, and Rule 12 attorney authority. Beasley, *pro se*, had subpoenaed defendants Burns and O'Bryan to the hearing to be witnesses for him on the vexatious litigant

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[58] Supp. C.R. 110
[59] R.R. 09/20/18, filed 05/28/19, 5:20 – 8:1.
[60] R.R. 09/20/18, filed 05/28/19, 6:19 – 23.
[61] R.R. 09/20/18, filed 05/28/19, 8:2 – 15

issue. The judge denied Beasley's request for a 30 day continuance, regardless that the two witnesses failed to appear[62]. Beasley's lawyer, John Lynch, complained that he was unprepared[63] and did not call Beasley as a witness. The trial judge denied Beasley's request by his lawyer to provide affidavit testimony after the hearing[64].

Constitutional defenses

About Beasley's constitutional challenges, the trial judge stated:

> "This issue about the constitutionality of somebody being ruled a vexatious litigant, I don't think that's my job. I mean, I hate to say, I think that usually has to be raised in the Appellate Court or in the Supreme Court, I don't think that I go there."[65]

The Security Bond

On December 11, 2018, the trial court granted defendants' motion and entered a Prefiling Order[66] – to which Beasley appeals. That order required Beasley to pay a $422,064 "security" bond by January 11, 2019, to continue his lawsuit; although defendants provided no evidence

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[62] R.R. 09/20/18, filed 05/28/19, 78:20 – 25
[63] R.R. 09/20/18, filed 05/28/19, 81:3 – 8
[64] R.R. 09/20/18, filed 05/28/19, 81:3 – 10
[65] R.R. 04/05/19, filed 05/31/19: 49:10 – 15.
[66] C.R. 1259

to support that amount to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees[67], attorney Vogel simply asked for this amount, which is the highest amount in state history.

Post-Declaration Activities

Beasley fired the Rogge Dunn lawyers and retained Vaughn & Ramsey law firm (also paid by The Hartford) to file a motion to rehear the vexatious litigant issue and allow Beasley to testify in his defense[68].

Attorney Daena Ramsey filed a January 11, 2019, Motion for Reconsideration which the court heard on April 5, 2019, to allow Beasley to testify on the meritorious nature of his lawsuit. The court made a distinction with Ms. Ramsey's motion for "reconsideration" vs. to "rehear" and denied allowing additional testimony – again prohibiting Beasley from testifying in his own defense[69].

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[67] TEX. CIV. PRAC. & REM. CODE § 11.055 (c)
[68] R.R. 04/05/19, filed 05/31/19: 8:15 – 21, 9:9 – 19,
[69] R.R. 04/05/19, filed 05/31/19: 37:1 – 10, 48:22 – 49:21

At the April 5, hearing to encourage the court to dismiss Beasley's lawsuit, hearing all defendants entered a nonsuit of their counter-claims – and made no distinction that they wanted to preserve their claim that Beasley was a vexatious litigant.

As the statute allows an appeal, Beasley filed an appeal by way of mandamus in this court, 05-19-00422-CV. May 15, 2019, this court denied that proceeding, indicating Beasley had the right to an interlocutory appeal – which his attorneys had not filed. So, *pro se*, Beasley then filed notice of this appeal on May 21, 2019[70].

Pro se in the trial court, Beasley set a hearing for June 14, 2019, to have the Prefiling Order vacated as defendants had nonsuited their claims on April 5, 2019[71]. Beasley also set his Rule 12 and disqualification actions for hearing on June 14, 2019[72].

Defendants set an emergency hearing to strike Beasley's motions, which the court granted on June 11[73], and the trial court dismissed

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[70] C.R. 1342
[71] Supp. C.R. 126
[72] Supp. C.R. 129
[73] Supp. C.R. 133

Beasley's lawsuit, with prejudice, for his failure to pay the bond[74]. The court entered a take-nothing judgment, exactly like requested by defendants in their January 19, 2018, Motion to Transfer Venue.

July 11, 2019, as amended August 6, 2019, Beasley filed a motion for new trial alleging: A violation of due process of the judges from the 191st District Court not allowing Beasley any hearings at all as a *pro se* litigant[75].

August 7, 2019, Beasley attempted a hearing to get his Motion for New Trial set for a hearing. Instead of allowing the hearing, the trial court, Judge Purdy, denied Beasley a hearing. Judge Purdy went further explaining[76]:

- A history of the court officers and administrators at the George Allen courthouse to not allow alleged vexatious litigants to file documents with any of the clerks, and
- To not allow alleged vexatious litigants to have any hearings.

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[74] Supp. C.R. 134
[75] Supp. C.R. 179 – 306, 190
[76] R.R. 08/07/19; filed 08/23/19; 5:13 – 10:11.

IX. POSITIONING THE SUMMARY OF THE ARGUMENT

January 2019, Texans ushered in an unprecedented set of new appellate justices. A clear message is that the old, "business as usual politics" of the Texas judiciary need stand-clear for a newer "people-friendly judiciary". Nationwide, we hear similar cries that "Time's Up" and "Lives Matter".

This is one of those appeals that can affirm, "win no matter the cost" or stand for the rule of law, as presented in Issue #1. The inquiry should not end there, but could.

We push further also to present the all too frequent dilemma of how society deals with past icons who abuse the rules, and how 'respect and power' no longer are sufficient to cover for misdeed of respected colleagues, as presented in Issue #2.

Rather than end there, we highlight a frailty in our American judicial system, and "how candor to the tribunal" is indispensable and expected by the litigants who come before the courts. Without it, miscarriages can occur, as presented in Issue #3.

This is that type of an appeal. It is important.

X. SUMMARY OF THE ARGUMENT

Seldom do conspiracies have an admission as the one provided by Judge Purdy of a history within the George Allen Courthouse to deprive citizens of their due process right to file documents and obtain hearings. In spite that no court order, rule of law, or legal precedent supports her, she told Mr. Beasley, with him being an alleged vexatious litigant, "you can file no documents here", and she refused to give him a hearing. Her confession is corroborated by the 191st District Court's actions to NOT let Beasley have one hearing **at all** as a *pro se* litigant. The court never let Beasley testify as a witness.

Defendants had a singular purpose – "no matter what it takes" – to put Beasley, a Black man, on the state-wide Vexatious Litigant list for the rest of his life. In getting Beasley on that list, Defendants' goal was to ensure that Beasley takes nothing by way of his suit. How do we know this was their defense strategy—**they said so**!

The first document Defendants filed in this cause on January 16, 2018, described their intent to show, "Peter Beasley is a vexatious litigant", and they asked that Beasley take nothing, which by law, constitutes "an Answer". And it almost has worked.

In keeping with defense's strategy, on December 11, 2018 the trial court declared Beasley a "vexatious litigant" and on June 11, 2019, entered an order that Beasley "take nothing". His lawsuit was dismissed. But, defendants' inclusion of an answer in their Motion to Transfer Venue resulted in their vexatious litigant motion of April 19, 2018, being three days too late.

This inquiry could perhaps stop here, but it is instructive to show why Rule 12 is important to protect the judicial process from attorneys who are willing to sacrifice their reputation and their sworn oath just to win.

The Prefiling Order against Beasley may only stand from a proper determination that he has been declared a vexatious litigant. While defendants may have pursued such a determination in Collin County, hardly can defendants complain about being sued when it was their own actions, as counter-plaintiffs, that caused the lawsuit to be filed in Dallas County. There is no such declaration of a vexatious defendant.

This appeal highlights Defendants' *second* late-filed attempt to declare Beasley a vexatious litigant. Mind you though, there is insufficient evidence that Beasley fits the definition of a vexatious

litigant. Defendants cite no prior declaration that Beasley is a vexatious litigant and they bring forward no valid rulings where he filed any frivolous pleadings. There is no showing, not even one, where Beasley attempted to relitigate an issue or repeatedly sue an individual after a final adverse judgment.

Defendants were unconcerned that their three-year pursuit to have Beasley declared vexatious would defame him, destroy Beasley's software company that he worked so hard to build, and eliminate any ability he had to earn a living. Defense counsel did not concern themselves with the Texas Disciplinary Rules of Professional Conduct, to show candor to the court, and to not make false legal arguments to achieve their goal to railroad Beasley onto the list.

Defendants though did not expect Beasley, an older person without a legal education, to fiercely defend his civil rights which all of our forefathers fought for each of us to have. Most people would surely walk-away. So Defendants then displayed no concern for the appellate

judicial costs to the Texas state[77] for defendants' scorched-earth, quest to get Beasley on the vexatious litigant list.

Beasley contends this epic battle is rooted in defense counsel Peter Vogel's numerous and incessant violations of the Texas Disciplinary Rules of Professional Conduct to 1) **first be Beasley's attorney and then switch sides and represent the defendants**[78], and 2) to insidiously switch roles back and forth from officer of the court vs. a party lying, in destructive ways, as a lawyer against a *pro se* litigant.

But none of the George Allen courthouse judges[79] in this affair have allowed Beasley to bring the Rule 12 challenge against Peter Vogel, a distinguished lawyer and former President of the Dallas Bar Association. So the litigation has grown exponentially.

Our American society has seen these types of failings many times before, as in the likes of Joe Paterno of Penn State fame, whose past glory did not allow him to take action against the sexual assaults on the

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[77] 05-17-01365-CV, No. 17-1032, 05-17-01286-CV, 05-17-01467-CV, 05-17-01492-CV, 05-18-00382-CV, 05-18-00395-CV, 05-18-00553-CV, 05-18-00559-CV, No. 18-0479, No. 19-0041, 05-19-00422-CV, 05-19-00607-CV

[78] Supp. C.R. 112, ¶7

[79] Maricella Moore, Bonnie Goldstein, Gena Slaughter

male athletes that surrounded him. Or we can pick singer R Kelly, and the numerous handlers on his staff who supported a system of alleged abductions, hostage takings, and sex abuses.

However, a greatest strength of a society is found its ability to correct itself, to forgive, and to make amends. Mistakes can happen, procedures aren't always followed and we all suffer from human frailties.

Lastly, the Prefiling Order is unconstitutional, as it eliminates a right to obtain an ex parte temporary restraining or protective orders without hiring a lawyer, which imposes a restrictive financial bar, when this rights deprivation could be achieved through less restrictive means.

XI. ARGUMENT

A. THIS COURT SHOULD REVERSE THE PREFILING ORDER AS THE UNDERLYING VEXATIOUS LITIGANT DETERMINATION IS UNWARRANTED.

1. The vexatious litigant determination may be attacked in an appeal of a Prefiling Order.

Before a court may issue a Prefiling Order, it must find that the plaintiff is a vexatious litigant. *See, Nunu v. Risk*, 567 S.W.3d 462, 466–67 (Tex. App.—Houston [14th Dist.] 2019). And because a vexatious-

litigant finding is the only statutory prerequisite, the propriety of that finding must be determined in an appeal of the Prefiling Order.

The review of a trial court's determination that a plaintiff is a vexatious litigant is for an abuse of discretion. *Harris v. Rose*, 204 S.W.3d 903, 905 (Tex.App. — Dallas 2006, no pet.). A trial court abuses its discretion when it "acts in an arbitrary or capricious manner without reference to any guiding rules or principles." *Id.* (citing *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex.1998)).

2. Defendants invocation of the vexatious litigant statute was inapplicable

Statutory interpretation questions are reviewed *de novo*. *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011).

a. All defendants filed their motion three days too late.

Relevant Facts

On page 8 of Defendants' January 16, 2018, motion to transfer venue[80], they added the phrase "Beasley is a vexatious litigant" and

[80] C.R. 29

added in their prayer[81], "Defendants pray that Plaintiff Peter Beasley take nothing by way of his claims, that Defendants recover their attorneys' fees, costs and expenses as allowed by law".

> By rule: The original answer may consist of motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, ***and any defense by way of avoidance or estoppel***, and it may present a cross-action, which to that extent will place defendant in the attitude of a plaintiff. Tex. R. Civ. P. 85.

Defendants added a defense to the lawsuit in their Motion to Transfer Venue, making that pleading an answer, and therefore defendants' April 19, 2018, vexatious litigant motion was 3 days too late.

Relevant Law

It is an abuse of discretion to grant a vexatious litigant motion filed more than 90 days after an answer. *See Dishner v. Huitt-Zollars, Inc.*, 162 S.W.3d 370, 377 (Tex. App.-Dallas 2005, no pet.) (holding the trial court abused its discretion in declaring appellant a vexatious litigant because motion filed outside the ninety-day time period).

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[81] C.R. 32

Substantive Analysis

The strict statutory interpretation is warranted, in this case, as there is no good faith reason to transfer a frivolous lawsuit to another county[82]. The statute contemplates for a defendant within 90 days of the institution of a lawsuit by a plaintiff to quickly curb and stop a frivolous lawsuit.

It was unreasonable and in bad faith for defendants to wait for more than 110 days of when they learned they had been sued[83] in Collin County before they filed their vexatious litigant motion, as they had previously attempted another late-filed declaration against Beasley nearly one year earlier.[84] Perhaps, defendants in bad faith believed that in the George Allen Courthouse in Dallas a mere allegation by a lawyer that a plaintiff is a vexatious litigant would be sufficient to take advantage of and manipulate certain judges to put Beasley "on the list", and they did not want to risk that determination in Collin County.

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[82] On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead. TEX. CIV. PRAC. & REM. CODE § 11.052 (a)

[83] C.R. 7. All defendants were served with notice of the lawsuit on 12-28-2017.

[84] C.R. 1262; In 2017, the "162nd District Court found that Defendants' vexatious litigant motion was untimely filed."

But, defendants, including O'Bryan, may not lie behind the log, transfer the lawsuit across two Texas counties, into 4 other district courts[85], and involve 5 additional district and presiding judges[86] and their clerks, and then jump-up and cry that there was some foul. Defendants may not file a lawsuit and sue Beasley that requires him to pursue his counter-claims, to entrap him as being a vexatious plaintiff.

The vexatious litigant statute does authorize a court for such a use.

b. Counter-plaintiff Burns is barred from seeking a vexatious litigant declaration by paying the transfer fee in Collin County, and counter-plaintiff SIM-DFW is barred from seeking a vexatious litigant declaration by paying the filing fee to have their lawsuits filed in Dallas County.

Keep in mind, the vexatious litigant statute may be invoked by any, all, or none of the defendants to obtain a dismissal of the claims by a vexatious litigant. If the plaintiff fails to furnish security within the time the trial court orders, the court "shall dismiss a litigation ***as to a moving defendant***." TEX. CIV. PRAC. & REM. CODE ANN. § 11.056;

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[85] The 296th, 44th, 162nd, and 191st District Courts.

[86] The Honorable Judges John Roach, Jr.; Bonnie Lee Goldstein; Maricela Moore; Regional Presiding Judge Ray Wheless; and Gena Slaughter.

Leonard v. Abbott, 171 S.W.3d 451, 456 (Tex.App. – Austin 2005, no pet.)

There is no Texas independent cause of action; where a defendant may seek to declare a plaintiff a vexatious litigant ***only*** in a lawsuit filed by the plaintiff. But Beasley did not file the lawsuit in Dallas County, defendants did! There is no such thing as a vexatious defendant, as the statute clearly provides only for a **defendant to find a plaintiff vexatious**. TEX. CIV. PRAC. & REM. CODE § 11.054.

Beasley does concede, that if there was evidence to do so (and he maintains there wasn't), defendants may have sought to declare Beasley a vexatious litigant in Collin County, where Beasley did file a lawsuit.

Chapter 11 of the Texas Civil Practice and Remedies Code provides the mechanism to restrict frivolous and vexatious litigation. See TEX. CIV. PRAC. & REM. CODE § 11.051; *Harris v. Rose*, 204 S.W.3d 903, 905 (Tex. App.-Dallas 2006, no pet.). In this chapter, the Texas Legislature sought to strike a balance between Texans' right of access to the courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with

little or no merit. *Willms v. Americas Tire Co.*, 190 S.W.3d 796, 804 (Tex.App.-Dallas 2006, pet. denied).

But here, Defendants instead are attempting to create a proactive, independent cause of action, not cognizable under Texas law.

Defendants petitioned to transfer the lawsuit to Dallas County. April 10, 2018, defendants, as counter-plaintiffs, ***intentionally*** paid the copy fee[87] in Collin County to transfer ***their*** lawsuit, and once the lawsuit was in Dallas County, they immediately filed a motion April 19, 2019, to find Beasley a vexatious litigant.

On, April 20, 2018, defendant SIM-DFW *intentionally* paid the filing fee[88] when there was **absolutely no need for them to do so**, as the lawsuit had already been filed in Dallas County. It is unmistakable that Defendants wanted to pursue their claims against Beasley, including pro-actively to declare him a vexatious litigant to get around being late for a 2nd time to file a vexatious litigant motion within the first 90 days.

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[87] C.R. 1367
[88] C.R. 10

Any complaint Defendants have by being sued in Dallas County they cannot maintain as they invited the lawsuit. No one would rightfully pay their opponents fees to have themselves sued; the logical presumption is that the counter-plaintiffs filed the lawsuit, and not Beasley. Doctrines of equitable estoppel, invited error, inconsistent actions, and the doctrine of laches all bar the counter-plaintiffs from filing the lawsuit late, in a second county, to proactive declare a counter-defendant vexatious.

Based on their delay in pursuing a vexatious litigant finding within the first 90 days in Collin County, Beasley relied on their delay and did then maintain his complaints against defendants in Dallas County. The elements of laches are: (1) unreasonable delay by one having legal or equitable rights in asserting them and (2) a good faith change in position by another to his detriment because of the delay. *Rogers v. Ricane Enterprises, Inc.*, 772 S.W.2d 76, 80 (Tex.1989).

Defendants had a right to seek the vexatious litigant determination in Collin County, but they did not assert that right. Their delay was unreasonable, and defendants' right in Collin County lapsed on April

18, 2018, upon their request for an immediate transfer to Dallas County. The transfer concluded Beasley's prosecution of his claims.

Beasley's position was then changed to a counter-defendant in Dallas County, which as a necessity of the filings, placed him into the position to *maintain* his claims. The position of him maintaining his claims is to his detriment, as the vexatious litigant statute includes parties who maintain their claims.

Beasley properly pled to assert his affirmative defenses[89], and defendants Burns and SIM-DFW are barred from applying the vexatious litigant statute in this manner.

3. Beasley has been harmed due to the trial judge's failure to make findings to support the judgment

A trial court may exercise its discretion to declare a party a vexatious litigant only if it first makes prescribed statutory evidentiary findings. *See*, *Leonard, Id.* at 459.

The December 11, 2018, Prefiling Order however does not find that Beasley has no probability to prevail on any of his specific claims. There

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[89] C.R. 998, Tab E, p. A67.

is no finding of any prior failed litigation history by Beasley. The court's general statement that "the statutory elements are satisfied in all respects" is insufficient, as Beasley is harmed into guessing the reason or reasons that the judge has ruled against him.

Beasley asked for findings of facts and conclusions of law to be filed, but the trial court failed to do this too[90].

To show sufficient adverse litigation histories, defendants pled under two independent grounds: TEX. CIV. PRAC. & REM. CODE § 11.054(1) and TEX. CIV. PRAC. & REM. CODE § 11.054(2), and Beasley therefore must attack each independent ground that fully supports a complained-of ruling or judgment. *Oliphant Fin. LLC v. Angiano*, 295 S.W.3d 422, 423-24 (Tex. App.-Dallas 2009, no pet.).

4. All of the defendants failed to meet their burden of proof as they introduced no evidence that Beasley has no reasonable probability to prevail on all of his claims

Prong #1: A showing of no reasonable probability to prevail

To declare a litigant vexatious, the defendant must show there is not a reasonable probability that the plaintiff will prevail in the litigation

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[90] Supp. C.R. 22, 23, 172

against the defendant. TEX. CIV. PRAC. & REM. CODE § 11.054. This burden is the defendants'.

But at the September 20, 2018, hearing, defendants only made arguments, and failed to call any witnesses, offered no sworn testimony, and introduced no evidence showing why Beasley could not prevail on his suit. *Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d 914, 919 (Tex. App.-Dallas 2013, no pet.) (noting also that a defendant who fails to offer any evidence showing why the plaintiff could not prevail on his suit has failed to meet its burden).

In Nunu, *Id.* the Houston court of appeals found that a prior nonsuit, *with prejudice*, was sufficient to show that Paul Nunu could not prevail in his current lawsuit. Similarly, a showing that a statute of limitations prevented a lawsuit could be legally sufficient evidence that a litigant could not prevail against a particular defendant, on a certain specific claim.

But in this instant case, the prior nonsuit was without prejudice, and there were three (3) defendants and thirteen (13) claims[91].

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[91] C.R. 638 –647, 2nd Amended Petition, App. Tab B, p. A3

Furthermore, Defendant SIM-DFW sued Beasley for declaratory judgment[92] ***in exact, direct opposition*** to Beasley's declaratory judgment[93] against SIM-DFW – confirming there are good-faith opposing claims on whether Beasley's expulsion was proper. SIM-DFW's pleadings to invoke the court's jurisdiction to decide the declaratory claims, then works as a bar from defendants from making an argument of judicial non-intervention.

At no time during the hearing did any of the defendants provide evidence that Beasley could not prevail on all of his claims. As a result, the evidence was legally insufficient to declare Beasley a vexatious litigant, hence the Prefiling Order was entered as an abuse of discretion. *See, Amir-Sharif, Id*.

5. Defendants failed in their burden to show evidence of five past failed litigations, as per CRCP § 11.054(1).

Prong #2: Showing of sufficient past failed litigations

To demonstrate past failed litigations, defendants provided unsworn, non-certified documents purportedly from Illinois federal court, Texas

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[92] C.R. 653, Tab F, p. A74.
[93] C.R. 641, Tab B, p. A15.

federal court, the Texas court of appeals, and from the Texas Supreme Court, which are all jurisdictions other than the Dallas District Courts. Beasley objected to those documents being admitted[94], but the court took and admitted them by taking judicial notice.

A court must take judicial notice of court decisions from other jurisdictions, but only when the party supplies the correct information. Tex. R. Civ. E. 202(b)(2). *See Southern Cnt'y Mut. Ins. Co. v. Ochoa*, 19 S.W.3d 452, 463 (Tex. App.-Corpus Christi 2000, no pet.)(We cannot take judicial notice of the orders of another court in another case unless we are supplied with proof of those orders.) Otherwise, evidence at a hearing must come by a witness proponent to offer the evidence. Documents attached to pleadings are not evidence, where the correct way to supply court orders from other jurisdictions is with the presentation of self-authenticated, certified copies. Tex. R. Civ. E. 902(4).

Like summary judgment proceedings, a vexatious litigant determination is often dispositive in nature, resulting in a litigant's

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[94] R.R. 09/20/18, filed 05/28/19, 56:22, 57:24 (objection overruled)

claims to become dismissed. And like summary judgment proceedings, the rules must be applied with strict scrutiny, and are held to a high standard.

Although court records from other proceedings are acceptable summary-judgment evidence, they must be certified or attested to under oath as authentic. *Gardner v. Martin*, 345 S.W.2d 274, 276-77 (Tex. 1961); *Soefje v. Jones*, 270 S.W.3d 617, 626 (Tex. App.-San Antonio 2008, no pet.). The court abused its discretion in taking judicial notice of non-certified court records from other jurisdictions in a vexatious litigant determination which may serve to dispose of a litigant's claims.

Even if they were accepted, **none of defendants' evidence identify any final determination adverse to Beasley**, where in litigations #1[95] & #2[96], the court did not have jurisdiction to render any judgment, in litigations #3[97] and #5[98] were voluntary nonsuits, and litigations #4[99],

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[95] C.R. 1018
[96] C.R. 1020
[97] C.R. 1029
[98] C.R. 1032
[99] C.R. 1030

#6[100], #7[101], #8[102], #9[103], #10[104], and #11[105] were original proceedings that identify no final determination adverse to Beasley.

Defendants attempt to misuse the statute to punish a litigant for simply losing five lawsuits or proceedings in seven years, when the Legislative intent from the statute was to curtail frivolous lawsuits and stop people from filing repeated, harassing litigations when there is no probability of success. While an original proceeding is a "litigation" which the court *may* consider to find a litigant vexatious, defendants still must show that litigation was finally determined adverse to the plaintiff. TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A). A denied mandamus proceeding rarely has any dispositive effect finally deciding any issue.

The necessity of a final judgment is crucial, as the statute provides no method for a litigant to get off the list if an underlying failed judgment is later overturned. The judgment must be final in the immediate seven

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[100] C.R. 761
[101] C.R. 763
[102] C.R. 1010
[103] C.R. 1015
[104] C.R. 1048
[105] C.R. 1054

years *before the filing of the vexatious litigant motion*, Tex. Civ. Prac. & Rem. § 11.054(1), and there is no evidence in litigations #4, #6, #7, #8, #9, #10, and #11 that show any adverse judgment against Beasley. Plus, original proceedings filed within the context of an ongoing lawsuit should not count as a "litigation finally determined" for to do so would discourage litigants from zealously advancing their rights.

Also, litigations #1, #2, #3, #4, #6, #7, #8, #9, #10 and #11 do not have any reference that Beasley commenced, prosecuted, or maintained those litigations *pro se*, which is required. Tex. Civ. Prac. & Rem. § 11.054(1)(litigations commenced, prosecuted, or maintained as a *pro se* litigant), See, *1901 NW 28th St. Tr. v. Lillian Wilson, LLC*, 535 S.W.3d 96, 99 (Tex. App.-Fort Worth 2017, no pet.)(where evidence of being *pro se* shown by the signature block on a pleading).

Defendants provided only one document purporting to be an Original Petition by Beasley in Litigation #5 which indicates he commenced that litigation *pro se*. But lawsuit #5 was not final, as it was under appeal

with this court on September 20, 2018, and it is still not final as it is now under appeal in Texas Supreme Court[106], and does not count.

Litigations #8, #9, #10, and #11 were determined after April 19, 2019, the day defendants filed their motion to declare Beasley a vexatious litigant – and therefore do not count.

Litigations #4, #6, #7, #8, #9, #10, and #11 purport to be original proceeding, mandamus actions, but defendants provided no evidence on whether those litigations were not post-judgment appeals of a final judgment. *Goad v. Zuehl Airport Flying Community Owners Ass'n, Inc.* No. 04-11-00293-CV (Tex.App.—San Antonio, May 23, 2012, no pet.)("an appeal of a judgment in a civil action is not a separate "litigation" as that word is used in Chapter 11"). The statute by its terms does not apply to post-judgment proceedings. *See*, *In re Florance*, 377 S.W.3d 837, 839 (Tex. App.-Dallas 2012, orig. proceeding).

There was no evidence that Beasley had any prior litigation determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure. There was no evidence

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[106] No. 19-0041

that Beasley had permitted a litigation to remain pending at least two years without having been brought to trial or hearing. There was no evidence that Beasley had previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

In total, defendants provided **no evidence of any litigations** that meet the definition of litigations Beasley commenced, prosecuted, or maintained as a *pro se* litigant that were finally determined adversely, and the trial judge abused her discretion in finding Beasley to a vexatious litigant and to enter a Prefiling Order.

6. Defendants failed in their burden to sufficiently show any evidence of the Beasley relitigating an issue against the same defendants, per § 11.054(2)

There was no evidence that after a litigation has been finally determined against Beasley, he repeatedly relitigated or attempted to relitigate, *pro se*, either: the validity of the determination against the same defendant as to whom the litigation was finally determined; or the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined.

Defendants, without candor, made a false argument to the court, saying defendants prevailed in litigation #5, the original nonsuited lawsuit between the parties[107]. They also falsely cite five bulleted items as "final determinations", some which are completely untrue and at best, were interlocutory orders which evaporated with the earlier nonsuit. In particular, defendants cite that "Disqualification of Peter Vogel as defense counsel" has been conclusively decided, when the facts are that no hearing on the matter has ever been conducted. These false arguments by defense counsel are prohibited under the Texas Disciplinary Rules of Professional Conduct, and the trial judge abused her discretion in finding Beasley a vexatious litigant.

7. Defendants nonsuited their claim to declare Beasley a vexatious litigant.

In their haste to get Judge Slaughter to dismiss Beasley's lawsuit, defendants – all of them non-suited their claims against Beasley on April 5, 2019. At the time, the December 11, 2018, vexatious litigant

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[107] "SIM-DFW Has Already Prevailed on Peter Beasley's Core Claims, Therefore, the Dallas County Judgment is not Subject to Relitigation in the Current Case"; C.R. 673.

determination was interlocutory, and with their nonsuit they withdrew their claim.

A long list of holdings define that a party has an absolute right to file a nonsuit, and a trial court is without discretion to refuse an order dismissing a case because of a nonsuit, unless collateral matters remain. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010). A nonsuit "extinguishes a case or controversy from 'the moment the motion is filed' or an oral motion is made in open court; the only requirement is 'the mere filing of the motion with the clerk of the court'". *Id.*

Judge Slaughter abused her discretion in not vacating the Prefiling Order once defendants nonsuited all of their claims.

8. The vexatious litigant statute is unconstitutionally vague and overbroad, as applied to Beasley

Beasley asked the trial judge to consider his constitutional complaints, but she would not, regardless that a party's failure to bring a constitutional claim in the trial court would waive those arguments. *See* Tex. R. App. P. 33.1; see, e.g., *Drum v. Calhoun*, 299 S.W.3d 360,

369-70 (Tex. App.-Dallas 2009, pet. denied) (holding defendant waived challenge to constitutionality of vexatious litigant statutes).

A constitutional challenge of first impression

To protect people from family violence, all citizens in Texas may obtain protective orders, and when necessary, such orders may be obtained ex parte[108]. Likewise, litigants may obtain ex parte relief when filing a lawsuit to protect the status quo. See, *Qwest Commc'n Corp. v. AT&T Corp.*, 24 S.W.3d 334, 337 (Tex. 2000) (per curiam).

However, a Prefiling Order and Chapter 11 of the Vexatious Litigant requires:

> A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation ***shall provide a copy of the request to all defendants*** named in the proposed litigation. TEX. CIV. PRAC. & REM. CODE § 11.102 (b).

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[108] If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant. TEX. FAM. CODE § 83.001 (a).

As a result, a vexatious litigant cannot seek an *ex parte* order as he may not file a lawsuit, *pro se*, without first informing the defendants.

Article I, section 13 of the Texas Constitution provides in part that "all courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Tex. Const. art. 1 § 13..; *Howell v. Texas Workers' Comp. Comm'n*, 143 S.W.3d 416, 444 (Tex.App.-Austin 2004, pet. denied). "The open courts provision includes at least three separate guarantees: (1) courts must actually be operating and available; (2) the Legislature cannot impede access to the courts through unreasonable financial barriers; and (3) meaningful remedies must be afforded, 'so that the legislature may not abrogate the right to assert a well-established common law cause of action unless the reason for its action outweighs the litigants' constitutional right of redress." *Howell*, 143 S.W.3d at 444.

A claim of unconstitutionality under the open courts provision will only succeed if the claimant (1) has a cognizable common-law cause of action being restricted by a statute, and (2) the restriction is unreasonable or arbitrary when balanced against the purpose and basis of the statute. *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 843 (Tex.1990). In

applying this test, the statute's general purpose and the extent to which the claimant's right to bring a common-law cause of action is affected should be considered. *Howell*, 143 S.W.3d at 444.

The statute does allow a vexatious litigant to still file lawsuits, but they must first hire an attorney. This would-be plaintiff could potentially file the exact same lawsuit, in substance, the litigant contemplated *pro se*, as the statute merely requires a licensed attorney to first review the pleadings to ensure they are not frivolous. However, hiring an attorney often imposes an undesired financial bar.

But there is no need to inform the defendants of the potential lawsuit, as the local administrative judge, no different than the judge granting an *ex parte* order, can appraise *ex parte* whether the lawsuit is frivolous. Likewise, the local administrative judge, no different than an attorney who might represent the would-be plaintiff, can appraise whether the lawsuit is frivolous.

Beasley has a common-law cognizable right to be able to obtain *ex parte* protective orders and *ex parte* restraining orders, without the financial bar of hiring an attorney. The requirement that Beasley first

inform a potential litigant of his actions is unreasonable, and may easily lead to irreparable harm and subject him to physical violence.

Because the Prefiling Order in the Vexatious Litigant statute unreasonably restricts Beasley and a citizen's right to an *ex parte* order, the Prefiling Order is unconstitutional and should be vacated.

Issue #1 Summary

In summary, defendants wholly failed in their burden to show Beasley is a vexatious litigant. The motion to declare him a vexatious litigant is groundless, a false pleading with not even one example of vexatious behavior, yet Beasley finds himself on the statewide vexatious litigant list – potentially for the rest of his life.

How can his be? And, is Judge Purdy's admission valid – that certain judges in the George Allen Courthouse do actually conspire together to put citizens on that list to deny them access to the courts?

Resolution of Issue #2 helps explain.

B. DETERMINATION OF THE RULE 12 AND ATTORNEY DISQUALIFICATION MOTIONS SHOULD HAVE PRECEDED THE VEXATIOUS LITIGANT DETERMINATION, AND NEVER HEARING THE MOTION VIOLATES THE OPEN COURTS PROVISION OF THE TEXAS CONSTITUTION.

Relevant Facts

As the first response to defendants' Motion to Transfer Venue, Beasley filed a series of Rule 12 and attorney disqualification motions from January 30 to February 5, 2017 against all three defense counsel in Collin County, as amended April 20, 2018[109] once the lawsuit was transferred to Dallas County.

After the lawsuit was transferred to Judge Slaughter, Beasley filed the motions again on August 15, 2018, and set the motions for hearing, ultimately for September 20, 2018, at "the vexatious litigant hearing."

At hearing, the trial judge herself recognized the fact that Rule 12 and attorney disqualification issues generally go before other matters. But in this case, for no explained reason, the trial judge chose to hear the vexatious litigant motion first, to which Beasley objected[110].

After the vexatious litigant declaration, Beasley again filed a Rule 12 attorney challenge motion on May 14, 2019[111], and set it for hearing on

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[109] Supp. C.R. 45 - 79
[110] R.R. 09/20/18, filed 05/28/19, 23:25 – 24:13.
[111] Supp. C.R. 111 - 125

June 14, 2019[112]. But on June 11, 2019, defendants obtained an emergency hearing[113], and the trial judge struck Beasley's motions permanently from being heard.[114] Judge Slaughter dismissed the lawsuit. The end result is that Beasley's motions to challenge opposing counsel were never heard at all.

Relevant Law

Under the Texas Constitution, individuals are entitled to due course of law. TEX. CONST. art. I §§ 13, 19. Among the rights which are included under the guarantee of due course of law is the right to access to the courts. *Nelson v. Krusen*, 678 S.W.2d 918, 921 (Tex. 1984); *Greenberg, Benson, Fisk & Fielder v. Howell*, 685 S.W.2d 694, 695 (Tex.App.—Dallas 1984, orig. proceeding). Access to the courts necessarily includes the right to have a trial court hear one's cause. *Id.*. *In re Amir-Sharif*, 357 S.W.3d 180, 181 (Tex. App.-Dallas 2012, orig. proceeding)(some pretrial motions must be decided before trial).

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[112] Supp. C.R. 126
[113] R.R. 06/11/2019; filed 08/23/19
[114] Supp. C.R. 133

The denial to set Beasley's Rule 12 motion for a hearing denies him access to the justice system, to which he is constitutionally entitled, U.S. CONST. XIV; Tex. Const. art. I § 19; *Nelson, Id.,* and this right to have a hearing cannot be withheld simply because a litigant is *pro se*. *In re Kleven*, 100 S.W.3d 643, 644 (Tex. App.—Texarkana 2003, orig. proceeding).

A litigant, though, who complains that a court will not hear a particular motions must show that the trial court's refusal to set a hearing was withheld over an unreasonable period. *In re Coston*, No. 06-17-00132-CR, (Tex.App.-Texarkana, July 20, 2017, orig. proceeding)(*pro se* petition for mandamus denied without prejudice; the delay must be shown unreasonable). There is no bright-line rule establishing what constitutes a reasonable time period. *Ex parte Bates*, 65 S.W.3d 133, 135 (Tex. App.-Amarillo 2001, orig. proceeding).

The trial judge, here though exposed a bright spotlight on her failure to hear Beasley's motions in a reasonable time by striking his motions and ordering that he <u>not be heard ever</u>!

The purpose behind enactment of the rule also weighs in favor of allowing Rule 12 challenges *as soon as practicable* after new or different

counsel attempts to appear in a case. *Air Park-Dallas Zoning Comm. v. Crow Billingsley Airpark, Ltd.*, 109 S.W.3d 900, 912 (Tex.App.-Dallas 2003, no pet.). The only requirement to obtain a hearing is to file a verified motion.

Substantive Analysis

Here, Beasley filed the motion immediately after the challenged attorneys first appeared new to the case. Once the case was transferred to the 191st Court, Beasley immediately again set the motions for hearing.

On similar grounds, this court granted relief by mandamus when a litigant was unable to obtain hearings on pretrial motions before the trial on the merits. Lakeith Amir-Sharif, had filed numerous motions in a lawsuit seeking to establish a parent-child relationship. This court held a trial court abuses its discretion if it refuses to hear motions properly presented to the court in a reasonable time. *In re Amir-Sharif*, *Id.*

Just like Amir-Sharif, Beasley set his Rule 12 and attorney disqualification motion repeatedly for hearings, and for more than 6

months before the vexatious litigant hearing. The trial judge never would hear Beasley's motions.

The protections provided by the rule are lost if a plaintiff cannot ever obtain a Rule 12 challenge against any lawyers filing any illegitimate actions, or who chronically violate the disciplinary rules.

Issue #2 Summary

As such, it is an abuse of discretion for the assigned trial judge to refuse permanently to hear a Rule 12 challenge, and dismiss the lawsuit based on motions filed by potentially unauthorized attorneys. The reasonable period to hear a Rule 12 challenge, if set first, is before the vexatious litigant hearing, and before the case is completely dismissed. It is relatively simple for challenged attorneys to provide affidavits or testimony from their clients, or attorney-client agreements, and to deliver a board resolution or bylaw to show authority to defend a corporate entity.

The trial judge abused her discretion in not hearing the Rule 12 challenge before the vexatious litigant hearing. But why?

The most likely reason is that Judge Slaughter was paying respect to attorney Peter Vogel, an attorney in this city for over 40 years, a

Partner at Gardere. How could this non-lawyer, a Black citizen have anything valid to challenge a long-time respected colleague? The judge's mind was already made up – there was no point in hearing Beasley's motion first, *or at all*.

C. THE DIRECT AND CIRCUMSTANTIAL EVIDENCE SUGGEST THAT THE TRIAL JUDGE WAS CONSTITUTIONALLY DISQUALIFIED FROM ENTERING THE PREFILING ORDER.

Beasley contends the motion to declare him a vexatious litigant is completely groundless, a false pleading with not even one example of vexatious behavior, yet he finds himself on the statewide vexatious litigant list – potentially for the rest of his life. How can this be?

We argue, Judge Slaughter, the respected presiding Civil District Judge for Dallas County, somehow became disqualified to hear defendants September 20, 2019 motion. You have to ask too - is Judge Purdy's admission valid – that certain judges in the George Allen Courthouse do actually conspire together to put citizens on the vexatious litigant list without due process?

Relevant Law

The issue of a judge's disqualification may be first raised on appeal. *Sun Exp. & Prod. Co. v. Jackson*, 729 S.W.2d 310, 314 (Tex. App.-

Houston [1st Dist.] 1987) (op. on reh'g), *rev'd on other grounds*, 783 S.W.2d 202 (Tex. 1989). Such disqualifications are determined from the record. *Id.*

This Court has concluded that a party has a right to a fair trial under the federal and state constitutions. *Thomas v. 462 Thomas Family Properties, LP*, 559 S.W.3d 634, 642 (Tex. App. – Dallas, 2018); *Rymer v. Lewis*, 206 S.W.3d 732, 736 (Tex. App.—Dallas 2006, no pet.) (citing *Metzger v. Sebek*, 892 S.W.2d 20, 37 (Tex. App.—Houston [1st Dist.] 1994, writ denied)).

"One of the most fundamental components of a fair trial is a neutral and detached judge." *Rymer*, *Id.* at 736. Although the Supreme Court traditionally has concluded that personal bias or prejudice alone was not a sufficient basis 'for imposing a constitutional requirement under the Due Process Clause,' in *Caperton v. A.T. Massey Coal Company*, the Court stated there are circumstances 'in which experience teaches that the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.' *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 877, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009).

Forty-Seven Specific Facts Proven in the Record

The facts in the record overwhelmingly prove the existence of the admitted conspiracy by some judges in the George Allen Courthouse were at play in this particular instance to deprive Beasley of a trial before an impartial judge.

As you go through the following facts, we ask the court to take judicial notice of the geography at the George Allen Courthouse and that Judges Moore and Slaughter are next door to each other. These judges share the same associate judge.

Remember too – Judge Slaughter met Beasley for the first time on September 20, 2018, she had no part in the affair before that hearing, and at every hearing she had with Beasley before dismissing his lawsuit, he was represented by counsel.

Creation and Evidence of the Conspiracy against Beasley

1. Defendants, without candor to the court, file a **groundless claim** in 2017 to declare Beasley a vexatious litigant under the declaratory judgment act to **falsely** allege to Judge Moore that Beasley is a vexatious litigant – although he is not. Supp. C.R. 45. In that hearing, Attorney Vogel bullies Judge Moore to try and make her violate the law, but she resists. C.R. 1239 – 1255.

….

MR. VOGEL: Yes, Your Honor. My sense is that if -- because this is an extraordinary -- we're asking for extraordinary relief.

THE COURT: Well, you're asking me to do something that the legislature has already codified a procedure for doing so. And it sounds like what you're saying is the codified procedure doesn't work for us here; so therefore, Court, ignore it and give us the relief anyway.

....

Defendants changed their argument to use Rule 13 and then Rule 1 to declare Beasley a vexatious litigant. They even asked to grant the motion and let Judge Molberg (the local administrative judge) fix it if Judge Moore's order was wrong.

THE COURT: So now what you're basically saying is go ahead and grant my motion. And if you're wrong, don't worry about it, Judge Molberg will fix it for you. Well, I'm not inclined to leave it in Judge Molberg's hands. I'm quite capable of –

MR. VOGEL: I'm sure he would appreciate that.

2. Judge Moore was a new female, judge in her first weeks in 2017, and she most likely, and perhaps understandably, believed the words of the respected male defense counsel who owed her candor, and assumed that Beasley was a vexatious litigant, but <u>defense counsel simply missed the filing date</u> – she said so.

Judge Moore: I took an oath of office not to do what I on one day think may be right without the limitation of, to follow the law. C.R. 1249 ln. 4 – 6.

3. But the bullying worked, where Judge Moore, on July 17, 2017[115], and October 31, 2017[116] suggest to defendants to move, within 90 days, to declare Beasley a vexatious litigant if he refiles the lawsuit. **Judge Moore implicates herself in her words to advise defendants how to place Beasley on the vexatious litigant list**.

4. After Beasley nonsuits his case, Judge Moore – *on her own suggestion*[117], informs defendants that she can award them their attorney fees which they had not asked for, she tells them the legal authority to use[118], and orders Beasley to pay $211,032 to defendants. The Texas Supreme Court has required briefing (which they rarely do) in review of propriety of Judge Moore's order[119].

5. Rather than file the vexatious litigant motion Day One in Collin County, defendants attempted to transfer the refiled lawsuit directly to Judge Moore[120] – their co-conspirator, but Judge Roach stops them.

6. In spite of an automatic stay, Defendants move[121] to transfer the lawsuit from Judge Goldstein to Judge Moore, which occurs somehow without a hearing[122].

7. After the refiled lawsuit was transferred to Judge Moore, she refuses to 1) recuse herself or 2) refer Beasley's recusal motion to the Region Presiding Judge for a hearing within 3 days. Beasley seeks mandamus relief in this court[123].

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[115] C.R. 1250, ln. 22 – 1251 ln. 4

[116] C.R. 340, ln. 8 – 341, ln. 7. "I would just encourage when we have litigants like this, shut it down quickly with a special exception with a hearing."

[117] C.R. 363 ln. 13 – 18.

[118] Supp. C.R. 378, ln. 10.

[119] Supp. C.R. 341.

[120] C.R. 661

[121] Supp. C.R. 80

[122] Supp. C.R. 91

[123] 05-18-00382-CV

8. Judge Moore continued to refuse to refer the recusal motion for a hearing until Beasley sought mandamus relief from the Texas Supreme Court on May 8, 2018.

9. But Judge Moore still refused to recuse herself in spite of her obligations under the Code of Judicial Conduct, forcing the Regional Presiding Administrative Judge to hear the contest.

10. Judge Moore, while under a recusal challenge, set the hearing to find him a vexatious litigant to be heard before her the day after the recusal motion hearing[124].

11. In a fairly unprecedented manner, Beasley, as a *pro se* litigant, obtained the recusal of Judge Moore, August 10, 2018, in a contested hearing.

Judge Slaughter Joining the Conspiracy

12. Judge Moore's court is next door to Judge Slaughter on the 7th floor of the George Allen Courthouse.

13. Judge Moore and Judge Slaughter have a joint Omnibus motion signed together which both refers cases from their courts to Judge Purdy.

14. August 7, 2019, Attorney Vogel interrupts and bullies Judge Purdy into lying and agreeing she cannot hear Beasley's motion because does not have a referral order[125].

15. Judge Purdy admits on August 7, 2019, that there is a history of certain judicial officials in the George Allen Courthouse from letting alleged vexatious litigants from having hearings. **Judge Purdy implicates herself and Judge Slaughter**. Her accomplice testimony is corroborated with both Judge Slaughter and Purdy denying Beasley hearings, striking Beasley's motions, and *falsely* telling him he can file no more documents.

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[124] R.R. 08/10/2018, filed 09/03/2019; 65:16 – 25.
[125] R.R. 08/07/2019, filed 08/23/19; 7:4 – 25.

16. Judge Slaughter is the Regional Presiding Civil District Judge of Dallas County.

17. Judge Slaughter admits she has never met Mr. Beasley before the vexatious litigant hearing on September 20, 2019. She has no personal knowledge of him, and has had no bad dealings with him before.

18. The vexatious litigant hearing on September 20, was Judge Slaughter's first hearing in the matter, where she had never been involved in the conflict between the parties. She had no orders of her own to support or enforce.

19. Beasley arrived with an attorney, paid by The Hartford, and was not *pro se*; whereas most vexatious litigant hearings are defended by the alleged vexatious litigant.

20. Judge Slaughter admitted that the law firm Beasley had, the Rogge Dunn Group, had a good reputation in her court[126].

21. Judge Slaughter admitted she did not know Beasley's attorney John Lynch[127], and therefore had no prior bad relationships with him.

22. Judge Slaughter would not give Beasley a continuance to allow Mr. Lynch to prepare for the hearing; although, she admitted that having an attorney on both sides of the dispute typically aids the court[128].

23. Judge Slaughter would not give Beasley a continuance even after Mr. Lynch represented that The Hartford had withheld the insurance from Beasley he was suing for until the morning of this hearing[129].

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[126] R.R. 09/20/2018; 09/03/2019; 8:8

[127] R.R. 09/20/2018; 09/03/2019; 8:8

[128] R.R. 09/20/2018; 09/03/2019; 6:19 – 23

[129] R.R. 09/20/2018; 09/03/2019; 11:6 – 15

24. Judge Slaughter would not give Beasley a continuance in spite of the obvious possibility of manipulation (an extrinsic fraud) that arises from the same insurance company being on both sides of the dispute.

25. Judge Slaughter would not give Beasley a continuance even though the defendants were under subpoena as witnesses for Beasley in the vexatious litigant hearing, but they did not appear[130].

26. Judge Slaughter decides to hold the vexatious litigant hearing before the Rule 12 and attorney disqualification hearings; although, she admits the attorney challenges normally come first[131].

27. Judge Slaughter admitted she was familiar with the vexatious litigant statute, had been involved before with some vexatious litigants, and had been involved in vexatious litigant appellate proceedings[132].

28. Judge Slaughter admits the vexatious litigant statute has various specific technical parameters which must be followed[133].

29. In the hearing, defendants provided no evidence that Beasley had no reasonable probability of success in his lawsuit, and the appellate holding from this court which confirms the need for this requirement be met is a case that involved Judge Slaughter's court[134].

30. Judge Slaughter did not allow Beasley's attorney to submit Beasley's testimony by affidavit after the hearing[135].

31. Judge Slaughter took judicial notice of orders outside of her jurisdiction, without requiring them to be certified orders, in violation of the Rules of Evidence and in not keeping with the strict nature of the vexatious litigant act.

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[130] R.R. 09/20/2018; 09/03/2019; 78:20 - 25

[131] R.R. 09/20/2018; 09/03/2019; 8:9 – 15

[132] R.R. 09/20/2018; 09/03/2019; 7:14 – 15

[133] R.R. 09/20/2018; 09/03/2019; 63:25 – 64:1

[134] R.R. 09/20/2018; 09/03/2019; 14:12 – 24; *Sharif v. Quick Trip*

[135] R.R. 09/20/2018; 09/03/2019; 81:3 – 8

32. Judge Slaughter refuses to hear Beasley's constitutional challenges, in spite of the Code of Judicial Conduct that she hear matters presented before her and in spite of this court's opinion in *Drum v. Calhoun*, which was a case involving Judge Slaughter.

33. Judge Slaughter found Beasley to be a vexatious litigant – in spite that the record does not show that Beasley is, or ever was.

34. Judge Slaughter orders Beasley to pay a $422,064 bond to continue his lawsuit, the highest amount in state history. Judge Slaughter orders the bond amount without requiring defendants to provide any evidence. Defense counsel simply asked the court to set that amount[136].

35. Judge Slaughter did not provide the required findings in the order so Beasley can appeal the order, without guessing.

36. Judge Slaughter, although they are not required, does not file requested Findings of Fact and Conclusions of Law to aid Beasley's appeal.

37. Judge Slaughter rules his lawyer's Motion to Reconsider was insufficient to allow Beasley to testify in defense of the vexatious litigant determination[137].

38. The entire time Beasley was before Judge Slaughter before she dismissed his lawsuit, he was represented by counsel and never appeared *pro se*.

39. The entire time before Judge Slaughter before she dismissed his case, Beasley only said 10 words – hardly enough to determine whether you like or dislike someone[138].

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[136] R.R. 09/20/2018; 09/03/2019; 62:15 – 63:6

[137] R.R. 04/05/2019; 05/28/19; 48:22

[138]

40. After dismissing Beasley's lawsuit, Judge Slaughter struck Beasley's Rule 12 and attorney disqualification hearings – permanently refusing to allow him a hearing on those issues.

41. Judge Slaughter struck Beasley's Rule12 motion based on defendants' use of *Drum v. Calhoun*[139] which does not support such an action, and it was a case involving Judge Slaughter.

42. Beasley alleges that the 191st court would not allow Beasley a *pro se* hearing on his Motion for New Trial to bring forward new evidence of extrinsic fraud, which requires a hearing.

Judge Purdy Joins the Conspiracy

43. August 7, 2019, Judge Purdy informs Beasley that he can file no more documents in the courthouse, nor can he have a hearing – although there is no court order or case-law supporting her decision.

44. August 7, 2019, Judge Purdy lies and tells Beasley that she does not have an order to allow him a hearing.

45. August 7, 2019, Judge Purdy refuses to give Beasley a hearing to get help set his Motion for New Trial before her, or another judge, even though Judge Slaughter was out of the office due to a death in her family.

46. Judge Slaughter and Judge Purdy both refuse to recuse themselves or refer their recusal motions within 3 days, or by September 3, 2019.

About Beasley

47. Unlike many on the vexatious litigant list, Beasley is not an incarcerated inmate.

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[139] 299 S.W.3d 360 (Tex. App.-Dallas 2009, pet. denied)

Substantive Analysis

With or without a lawyer, and with or without his witnesses in his defense, the record sufficiently demonstrates that Judge Slaughter's mind was made up that she would find Beasley to be a vexatious litigant – in spite of the law, and in spite of the evidence. It's absolutely clear, the Rule 12 motion should have gone first – or simultaneous as the two motions were in opposition.

An impartial judge facing a new case, with a new attorney, and where party-witnesses have failed to appear for the hearing most likely would grant the new attorney the courtesy of a continuance. There was no good cause shown to hold the vexatious litigant that day, when defendants had waited years to bring the issue for a resolution.

It is not conceivable how an impartial judge could find Beasley to be a vexatious litigant when there was **no evidence at all** that he had no reasonable probability to prevail on his claims. And, **none** of the alleged past failed litigants qualify as valid grounds to support a vexatious litigant finding.

Beasley was ordered to pay in excess of a $400,000 bond to continue his case, where most vexatious litigant orders affix bonds well less than

$30,000. This amount is the highest in state history, and was supported with no evidence at all.

There is a documented pattern of the judges of the 191st District Court denying Beasley hearings. There are false statements made by the judges, and the presiding judge refused to hear Beasley's constitutional challenges.

The record sufficiently establishes that, given the human nature of the various people, judges, rulings, and statements involved, the probability of bias of the judge was too high to be constitutionally tolerable. With the confession by Judge Purdy, Judge Slaughter's decisions to 1) not hear the Rule 12 issue first, 2) to not provide a continuance when it harmed no one, 3) to not allow Beasley to provide affidavit or direct testimony in his defense, and then 4) the pattern of denied hearings, stricken motions, and actions to stop Beasley from filing court documents all prove that Judge Slaughter was disqualified from hearing the vexatious litigant issue. It is unlawful to deny a litigant access to the courts.

The general rule is that conspiracy liability is sufficiently established by proof showing concert of action or other facts and circumstances from

which the natural inference arises that the unlawful, overt acts were committed in furtherance of common design, intention, or purpose of the alleged conspirators. *Int'l Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567, 583-84 (Tex. 1963). "When men enter into conspiracies, they are not likely to call in a witness * * *", *Id.*, quoting *Jernigan v. Wainer*, 12 Tex. 189, (Tex. 1854).

But here, **Beasley actually has a witness** – Judge Purdy who admits that such conspiracies to deny alleged vexatious litigants their due process rights do exist in the George Allen Courthouse. In total, the circumstances suggest that Judges Moore, Slaughter, and Purdy were working with a common intention to place and keep Beasley on the vexatious litigant list.

Why would these judges do this?

It's called human nature.

Human Nature Caused the Disqualification

Working backwards, Judge Purdy, an associate judge, admits of a history that she is aware of. It sounds like something she's learned in talking to the courthouse personnel – something she's been told, and if told by an elected judge to follow that practice, it would be human

nature for her to do so. Both Judges Slaughter and Moore who she works with had both already declared or planned to declare Beasley as vexatious. It would be human nature for Judge Purdy to support her colleagues in their decision.

Likewise, Judge Slaughter might easily try and support her colleague Judge Moore, who Beasley had recused just a few weeks before. Beasley had appealed and not paid the $211,032 attorney fee award that Judge Moore ordered Beasley to pay. The judges share the same clerk pod, they office next door on the same floor, and Judge Moore was a new judge in 2017, and Judge Slaughter was the presiding civil district judge for Dallas County.

And Judge Moore could easily make the mistake that defense counsel would not make utterly false arguments and that they would not file groundless motions. Peter Vogel asked Judge Moore to violate the law, but she refused. She refused to allow defendants to declare Beasley vexatious under the Declaratory Judgment Act, but naturally assumed Peter's Vogel argument of "extreme circumstances", must be valid. Their argument was – "Beasley is a vexatious litigant, but we missed the filing date."

Judge Moore made the mistake to accept their false legal argument to create a false truth.

Hate-Filled Conspiracies

Anti-Semitism, White Supremacy, Homophobia, and racism all are fueled and built on 1) hate and 2) lies. Everyone hates crime, but it a lie to say that all Black people cause crime. Everyone wants an equal chance, but it is a lie to say all Jews cheat and don't play by the rules.

If you work in the legal profession, it is understandable and expected to hate vexatious litigants. Even non-lawyers and ordinary citizens also detest people who harass others with frivolous lawsuits, those who waste precious judicial resources and 'losers' who discredit our American justice system.

But it is a lie to say Peter Beasley is a vexatious litigant.

Lies by Attorneys against Pro Se Litigants are Devastating

In 2017, defendants filed a legally groundless motion to declare Beasley vexatious under the Declaratory Judgment Act. The entire argument was a violation of the Disciplinary Rules of Professional Conduct. Beasley tried to expose how Judge Moore was tricked and

taken advantage of by defense counsel, but he has been unable to get his timely Rule 12 hearing set. **Why – because the courts are in fact predisposed against vexatious litigants**.

Experienced *pro se* litigants and experienced lawyers too know that one of the easiest ways for a lawyer to beat a *pro se* litigant is simply to lie against them. Such unscrupulous litigators will make false legal arguments and introduce improper evidence because the *pro se* litigant most likely will be unable to understand what is happening against them. These lawyers, often men, can also rely on their reputation, the name of the firms where they practice, and their history serving their profession such as the Dallas Bar Association to bully and take advantage of women judges and female lawyers[140].

From: Richardson, Christina [mailto:crichardson@fryarlawfirm.com]
Sent: Friday, November 03, 2017 1:37 PM
To: Peter Beasley
Subject: Re: An offer amount - are you serious!

I'm not speaking to Bob Bragalone. He's a bully and he's attempting to bully me now. He won't talk to Eric and he won't talk to me on the phone.

FRYAR LAW FIRM P.C.

Christina Richardson
Fryar Law Firm, P.C.
912 Prairie, Suite 100
Houston, Texas 77002-3145
Direct: 281.715.6396 x107

[140] Beasley's female lawyer complained of bullying against her. Supp. C.R. 52.

Such tactics elicit an emotional response from the pro se litigants that courts do not like, which tends to hurt the litigant's chances of future success. Few *pro se* litigants have the resources to pay for the reporter's records to document any pattern of lies against them. And such lying is not generally actionable on their own, and such violations cannot be proven except over periods of time.

Like how a false sexual rape indictment against a man is particularly devastating, a false vexatious litigant allegation is particularly destructive in eliminating a court's ability to be a fair fact-finder concerning a *pro se* litigant.

Issue #3 Summary

Female judges Moore, Slaughter, and Purdy were bullied into a disqualification – through utterly groundless lies by respected male advocates. The issue of bullying by male lawyers when facing female judges is well documented, and the court's record is noticeably silent of opposing Counsel Soña Garcia verbally arguing Beasley to be a vexatious litigant. The unique combination here was the bullying of female judges was to support a false vexatious litigant allegation against a Black man, and 5 of the last 6 litigants Dallas County placed

on the vexatious litigant list were black people. Prejudice and bias most often work to the disadvantage of the powerless.

The court's failure to allow the Rule 12 and attorney disqualification hearings allowed the judicial disqualification to happen. As Judge Slaughter indicated, such attorney misconduct issues when raised, need to be heard first.

In result, Judge Slaughter, perhaps unknowingly, lost all impartiality and would never let Beasley have a hearing at all. Her disqualification is proven by this unique record, and imputed back to her first hearing and the December 11, 2018 Prefiling Order.

The June 11, 2019, dismissal order is void too.

XII. SUMMARY & PRAYER

This court of appeals covers six Texas counties, representing over 4 million citizens, and has a duty to establish and uphold the rule of law. We believe in bringing disputes to the courts for resolution, and not to the streets. The system is imperfect at times, but no one is allowed to be

"above the law". A testament to our people is how we treat the last, the lost, and the least.

This challenge between the parties is "one remand away" from getting on track for a permanent resolution, without the need for future appeals and bills of review. Time is up for defenses' strategy to put Beasley on the vexatious litigant list to escape their liability. It almost worked. The cost though was years of delay, increased damages to Beasley, and an utter waste of judicial resources – based on groundless, false legal arguments. Rule 12 is indispensable to our justice system.

Beasley seeks an order vacating the Prefilng Order as the trial court abused its discretion in finding plaintiff a vexatious litigant. The vexatious litigant statute is unconstitutional. Beasley requests the court inform the Office of Court Administration to remove Beasley from the vexatious litigant list. Beasley requests his three points of error be sustained, that the trial judge be declared disqualified, and that the case be remanded for further proceedings. Beasley prays for general relief.

Respectfully
/s/Peter Beasley
Peter Beasley, Plaintiff – Appellant

P.O. Box 831359
Richardson, TX 75083
(972) 365-1170
pbeasley@netwatchsolutions.com

XIII. CERTIFICATE OF COMPLIANCE

Appellant, Peter Beasley, hereby certifies the word-limited sections of this document contain 13,198 words, per Rule 9.4.

Dated: September 10, 2019

/s/Peter Beasley

Peter Beasley, Plaintiff-Appellant, pro se

XIV. CERTIFICATE OF SERVICE

Plaintiff-Appellant, Peter Beasley, hereby certifies that on September 10, 2019, the attached document was served on the Appellees through the court's electronic filing system.

Dated: September 10, 2019

/s/Peter Beasley

Peter Beasley, Plaintiff-Appellant, pro se

XV. APPENDIX

Table of Contents

Tab A

CAUSE NO. DC-18-05278

PETER BEASLEY,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, et al.,	§	
	§	
	§	
	§	
Defendant.	§	**191st JUDICIAL DISTRICT**

ORDER GRANTING DEFENDANTS' MOTION TO DECLARE PETER BEASLEY A VEXATIOUS LITIGANT

On September 20, 2018, the undersigned heard Defendants' Motion to Declare Peter Beasley a Vexatious Litigant. The Parties appeared through counsel. After considering the motion, the post-hearing briefing from both parties, the evidence presented, and arguments of counsel, the Court finds that the statutory elements are satisfied in all respects and therefore makes the following ORDER.

The Motion to Declare Peter Beasley a Vexatious Litigant is **GRANTED** and the Court declares Peter Beasley a Vexatious Litigant.

Plaintiff Peter Beasley is required to post bond in the amount of $422,064.00 with the District Clerk as security per TEX. CIV. PRAC. & REM. CODE § 11.055 within thirty (30) days of this Order. If such security is not timely posted, this case will be dismissed with prejudice per TEX. CIV. PRAC. & REM. CODE § 11.056.

Furthermore, the Court prohibits Plaintiff Peter Beasley from filing any new lawsuits *pro se* in any court in the State of Texas until Plaintiff receives permission from

the appropriate local administrative judge pursuant to sections 11.101 and 11.102 of the TEX. CIV. PRAC. & REM. CODE. Failure to comply with this ORDER shall be punishable by contempt, jail time, and all other lawful means of enforcement. TEX. CIV. PRAC. & REM. CODE § 11.101(b).

It is further ORDERED that the Clerk of the Court provide a copy of this order to the Office of Court administration of the Texas Judicial System within 30 days of entering this order.

SIGNED this 11th day of ~~October~~ December, 2018.

JUDGE PRESIDING

Tab B

Filed: 2/22/2018 3:39 PM
Lynne Finley
District Clerk
Collin County, Texas
By LeAnne Brazeal Deputy
Envelope ID: 22710309

Cause No. 296-05741-2017

PETER BEASLEY Plaintiff	§	IN THE DISTRICT COURT OF
v.	§	COLLIN COUNTY, TEXAS
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, JANIS OôBRYAN, NELLSON BURNS	§	296th JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED PETITION

Plaintiff, Peter Beasley, (ñBeasleyò) files this Second Amended Petition, complaining of Defendants, Society for Information Management, Dallas Area Chapter, Janis OôBryan, and Nellson Burns, and states:

I. NATURE OF THE CASE

1. This is a contract dispute involving a voluntary professional business associationôs failure to honor its contract with a member, a member of its board of directors, and its resulting acts to defame and injure plaintiff, for which he seeks monetary damages, declaratory and injunctive relief.

2. Plaintiff also mounts a derivative suit on behalf of SIM Dallas against the individual defendants, Janis OôBryan and Nellson Burns.

II. PARTIES

3. Plaintiff is Peter Beasley, an individual residing in Dallas County.

4. Defendant, Society for Information Management, Dallas Area Chapter (ñSIM Dallasò), is a Texas nonprofit corporation and an Internal Revenue Code §501(c)(6) organization. Defendant operates across the entire North Texas region and has its official business address at P.O. Box 208, Frisco, TX, 75034, in Collin County.

5. Defendant. Janis OôBryan, (ñOôBryanò), is an individual resident of Dallas County as is the current, past president of SIM.

6. Defendant. Nellson Burns, (ñBurnsò), is an individual resident of Dallas County, and is the current president of SIM.

III. DESIGNATIONS

A. Discovery Control Plan

7. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

B. Claim for Relief

8. Plaintiff seeks monetary relief over $1,000,000, and non-monetary relief.

9. Plaintiff seeks declaratory relief.

10. Plaintiff seeks injunctive relief and imposition of a receiver to take control over the Society of Information Management Texas corporation, to restore its operation to those within the laws of this state.

C. Jurisdiction

11. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Courtôs minimum jurisdictional requirements.

12. The Court has personal jurisdiction over defendants

a. Because the primary defendant is a resident/citizen/business organization formed under the laws of the State of Texas.

D. Mandatory Venue

13. Venue is proper in Collin County under Texas Civil Practice & Remedies Code section 15.002 (3) because, during the time the basis of the suit accrued, defendant's principal office in this state is in Collin County.

14. Venue is mandatory in Collin County in a suit for libel, under Texas Civil Practice & Remedies Code § 15.017 because Collin County is the principle office of the defendant, and plaintiff elects to sue in Collin County.

IV. THE UNDERLYING DISPUTE

15. This lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws, him trying 1) to stop a *substantial* give-away of memberôs dues to non-members who are friends of the board and 2) to stop the organizationôs discriminatory membership practices ï to unfairly exclude minorities, keeping them from advancement opportunities.

V. FACTUAL BACKGROUND

16. Beasleyôs SIM Membership and Offices Held. Beasley is a member of SIM Dallas and has been a member in good standing of the organization since September 2005. For each of those years, Beasley paid dues to SIM Dallas. Total dues paid by Beasley to SIM were approximately $5,345.00. Beasley has volunteered hundreds of hours of his time to help SIM thrive. Beasley is also a Director serving on the SIM Dallas Executive Committee, (ñBoardò), and is the Membership Committee Chair, (ñMembership Chairò). Beasley was first elected to the Board in November 2012, and reelected in 2013, 2013, and 2014. Beasley was elected for his second annual term as Chair on November 9, 2015, for the 2016 program year.

17. Beasley was the first African-American elected to SIMôs Board in its history.

18. Contract Board Agreements. To secure and protect Beasley to serve in a legal, fiduciary role to the SIM Dallas, Beasley and SIM had an agreement beginning January 8, 2013, that SIM Dallas will a) cover Beasleyôs activities serving on the board under the insurance carried by the SIM organization, b) operate within the bylaws and organizational charter, and c) agreed to supervise Beasleyôs activities as a board member. In return, Beasley agreed to a) volunteer his time in service of the corporation, b) would resign if he was unable to perform his duties, c) accept the liabilities of being a director of a Texas corporation. In exchange for the insurance protection and contract of responsibilities defined in the bylaws to protect Beasley, he relied on that promise and agreed to take-on the personal financial liability for his actions working as a director of the corporation, and served on the board in 2013, 2014, 2015, and 2016.

19. Control of the SIM Board. The SIM Board has 10 voting members and 5 officers. Under the bylaws, the SIM Dallas Board is led by its CEO, the President. For 2016, the SIM President was Janis OôBryan (ñOôBryanò) and its Presidentôs elect was Nellson Burns (ñBurnsò) ï the 2017 and 2018 President of SIM Dallas.

20. Beasleyôs Advocacy to SIM and its Board. In his position as a Director and Membership Committee Chairman, Beasley observed numerous violations by SIM Dallas in following its bylaws. In his first year on the Board, Beasley successfully amended the bylaws to bring SIM into compliance with how it recertified members annually for continued membership. Beasley became staunch in support of following the bylaws within the Board, warning against: a) wasting and hording of

hundreds of thousands of dollars in corporate assets; b) allowing non-voting members of the Board to vote; c) constituting a board or directors in contravention of the bylaws, d) the failure of certain Board members to exercise independent professional judgment, rather than simply rubber-stamping the decisions of a few Board members who controlled the Board, e) the President (OôBryan) appointing an individual to the board (Bouldin) without vote or approval of the board, f) and allowing a husband and wife to serve as members of the board. Beasley advocated appointment of a Parliamentarian, to have officers with access to the corporate funds (in excess of $400,000) to be bonded, and advocated the organization provide annual financial reports to the members.

21. Waste of SIMôs Assets By Board. SIM Dallas is exempt from federal taxes, under IRS regulation 501(c)(6), as a Business League, (not as a 501(c)(3) charity). SIMôs purpose as an organization is to further the education and professional support of its members.

22. SIMôs Articles of Incorporation and its bylaws both specify the purpose for which the corporation is organized:

> The specific purpose and primary purpose is to foster the development of information systems for the improvement of the management performance of its members.

The Articles further provide that ñthis corporation shall not, except to an insubstantial degree, engage in any powers that are not in furtherance of the primary purpose of this corporationò and that ñthis corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of this corporation.ò Article I, Section 2 of SIMôs current, September 9, 2013, bylaws lists five (5) activities to benefit members, none of which list the donation of SIM assets to aid others.

23. In spite of the founding documents, OôBryan, Burns, and others have sought to run the organization as a philanthropic venture, and not a business league. Beasley objected and argued against such donation activity, which is contrary to SIMôs organizational articles and its bylaws. Despite Beasleyôs ongoing objections, OôBryan rebuffed Beasley, and announced her intention to force through such measures. Furthermore, several Directors have sought approval to use SIMôs $402,188 available in cash assets to fund activities to benefit members, but OôBryan blocked use of the funds for such proper purposes. Although Beasley attempted to work with other Board members to find a way to resolve the conflict, OôBryan

refused to meet with or discuss the issues with Beasley. In February 2016, she began making false accusations against Beasley, removing responsibilities from him, and denying him permission to attend, on behalf of SIM, the national leaderôs conference.

24. Beasley, with the support of other board members, offer several valid options to resolve the dispute:

a. Hold transparent ñcharity eventsò so that any monies raised for philanthropy would be kept separate and distinct from memberôs assets, as was recommended by SIM National and other SIM Chapters;

b. Ask the members to vote-in a level of philanthropy (i.e. 10% of assets); or

c. Submit a vote to the members to eliminate the bylaw restriction to allow for ñsubstantialò use of funds in ways as voted by the board,

but SIM Dallas would not allow these simple options to resolve the dispute.

25. Discriminatory Membership Practices. Beasley further advocated to the Board about its discriminatory membership practices, which resulted in minorities being under-represented in the SIM membership.

26. Beasley detected and documented a long-standing practice to keep SIM Dallasô membership to primarily consist of White Males only. Into the 2000ôs, the face of society, the information technology ranks and the people of North Texas have become more diverse. However, SIM Dallasô membership practices of the 2012 ï 2016 era disproportionately tried to excluded women, India nationalists, Blacks (African-Americans, Africans), Middle-Easterners and Hispanic applicants.

27. **Under Beasley's term serving on and leading Membership, the SIM Dallas membership percentage of White Men dropped noticeably.**

28. Challenges to Beasleyôs membership recommendations mounted month by month in 2015 and 2016, with a stated complaint that Beasley does not ñprotect the brandò. Beasley documented a practice by board members John Cole, Nellson Burns, and Patrick Bouldin, (who all had a business relationship with Nellson Burns), and others, to challenge India, Black, Hispanic, and Female candidates for membership. To ward-off non-voting members of the board from succeeding at discriminatory membership practices, on **March 18, 2016**, Beasley modified his committeeôs procedures to no longer accept challenges from non-voting members of the board.

29. **SIM Dallas then moved to expel Beasley**.

30. Improper and Void Expulsion of Beasley from SIM. March 2016, Burns, OôBryan, and the other Officers on the Board, via e-mail exchange, decided to embark upon a campaign to rid SIM of Beasley. SIM invited Beasley to come to a downtown Dallas 8 a.m. meeting on March 24, 2016 (for the purpose of asking Beasley to resign, unknown to Beasley). However, at 6:00 a.m. the day of the scheduled meeting, Beasley received notice that the meeting had been cancelled. The next day, **March 25, 2016**, Beasley was informed via e-mail that SIM would hold a meeting of the Executive Committee on April 4, 2016, at 8:00 a.m. to seek Beasleyôs expulsion from SIM. No information was provided to Beasley on what he had done to cause his expulsion from membership in SIM.

31. In response to SIM Dallasô attempt to expel Beasley ï without telling him why or asking first for his resignation ï Beasley, March 29, 2016, Beasley sued SIM Dallas and sought and obtained a temporary restraining order in Dallas District Court, prohibiting his expulsion. Rather than meet and resolve the dispute, as Beasley asked to do, SIM Dallas removed the lawsuit to federal court.

32. In direct violation of the then valid Texas TRO, SIM Dallas met anyway on April 4, 2016, to discuss and plan the expulsion of Beasley. Although Beasley was still then a member of the Board, SIM Dallas intentionally excluded him from the meeting.

33. After expiration of the TRO while the lawsuit was in federal court, on April 13, 2016 at 9:17 p.m., Beasley received an e-mail, informing him that SIM Dallas intended to hold a meeting of the Executive Committee on April 19, 2016, at 8:00 a.m. to seek Beasleyôs expulsion. Again, no information was provided to Beasley on what he had done to cause his expulsion from membership in SIM Dallas. The notice for the meeting was legally improper and invalid because it provided Beasley less than the 7 daysô notice required in the bylaws. On April 17, 2016, Beasley objected to the notice on this basis and he further objected to allowing others to attend by phone, as the meeting notice provided no option for attendance by phone. In his objection, he indicated he would attend if 1) he was told the reason he faced expulsion where he could defend his membership rights, and 2) the meeting was rescheduled with proper notice given ï to potentially be represented by counsel.

34. Despite his objections, on April 19, 2016, Beasley was informed by e-mail that he had been expelled from SIM Dallas. SIM Dallasô minutes from the April 19,

2016, Executive Committee meeting indicated only ten members of the board were present at the meeting, which is not a quorum under SIM Dallasô bylaws and Texas law. Further, SIM Dallas used votes from non-voting members of the board who were illegally attending by phone to pretend they had enough votes to sustain expulsion. Accordingly, for many reasons, Beasleyôs purported expulsion from SIM Dallas was and is void.

35. After being the first African-American voted to the Board, Beasley became the ONLY member in the Chapterôs 34+ year history to ostensibly become expelled ï **of which Beasley vigorously disputes and seeks to overturn**.

36. Due Process Violation. The expulsion further violated Beasleyôs due process rights in that he was not given adequate notice, was given no notice of the ñchargesò to be brought against him, was given no opportunity to prepare a defense or to be represented by counsel. Moreover, the minutes reveal that that OôBryan and Burns instituted a ñkangaroo courtò to try Beasley in absentia. The charges brought were baseless and made in bad faith, and even the minutes prepared by the SIMs counsel indicate that the primary topic of discussion was the conflict over Beasleyôs insistence that SIM Dallas follow its own rules. The true purpose of OôBryan and Burns in forcing through Beasleyôs expulsion was to get him off the Board ï which, under the bylaws the Officers and other board members were without power to do. SIM Dallas acted in extreme bad faith, and the resulting expulsion was arbitrary, capricious, and in violation of the law.

37. Illegally Constituted Board. SIM Dallasô officerôs illegal action to attempt to remove Beasley from the board has led to all subsequent boards to be illegally constituted. The process to elect a new Executive Committee (board), per the bylaws, requires a vote of the current board to approve the following yearôs board. However, SIM Dallas has refused to allow Beasley his vote, and therefore any resulting board is illegally constituted.

38. Beasley Remains a Member of the Board. Beasley was elected to the Board by the members, and under the bylaws, only members have the exclusive power to remove a board member, and Texas law holds that Beasleyôs term of office extends from when he was elected, until the directorôs successor is elected. Tex. Bus. Org. Code § 21.407. As all subsequent boards have been illegally constituted, Beasley remains an elected member of the board ï and has standing under Texas law (as a member and board member) to challenge the ultra-vires acts of SIM Dallas and its

officers or directors from when Beasley was and continues to be acting in the best interest of SIM Dallas. Tex. Bus. Org. Code §§ 20.002(c)(1); 21.522(1)(A).

39. Breach of Contract. Beasley was but a volunteer, providing his time for years in support of the organization. By agreement, at worse, if for some reason Beasley could not fulfill his duties, SIM Dallas had agreed to ask for his resignation, and he had agreed to resign. But instead of giving Beasley the professional courtesy offered to most elected officials and abide by its agreement, SIM Dallas did not ask for Beasleyôs resignation, but instead sought to defame and expel Beasley.

40. Illegal Distribution of Member Assets to Member, Peter Vogel. Rather than simply resolve the dispute, SIM Dallas, controlled by Burns and OôBryan, wasted the assets of the organization by mounting an unconscionable legal defense, wasting over $422,000, in mounting and continuing legal fees. Their legal actions, to cover-up their own personal faults, included filing completely groundless, frivolous pleadings, having 2 and 3 lawyers needlessly attend depositions, and wasting court resources by removing the lawsuit to federal court, for it only to be remanded back to state court.

41. SIM Dallas relies on attorney Peter Vogel for legal services; however Peter Vogel is a member of the organization, therefore with a personal interest in the outcome of the case. February 27, 2016, plaintiff asked for Mr. Vogelôs voluntary withdrawal of the case, but he refused.

42. Further, attorney Peter Vogel claims he can represent the organization, represent all of its members, represent Peter Beasley, and represent himself all within the same lawsuit ï which have conflicting interests, which violate his professional responsibilities as an attorney. Attorney Peter Vogel has represented one faction of the board, against another, which violates his professional responsibilities as an attorney. He has failed in his obligation to ensure that the Texas corporation operates within its governing documents.

43. SIM Dallas, with the advice of attorney Peter Vogel, refused at every juncture offered by Beasley to meet to try and resolve the dispute. In February and March 2016, Beasley asked to meet with OôBryan to ñclear the airò and resolve the dispute, but she failed to meet. March 24, 2016, Beasley offered to meet a resolve the dispute, but SIM Dallas, via e-mail by Peter Vogel, refused to meet. April 4, 2016, Beasley asked board member Kevin Christ to inquire if SIM Dallas would meet to resolve the dispute, but they refused. And in Dallas District Court, the trial judge

ordered the parties to mediation by October 6, 2017, but SIM Dallas would not make themselves available to meet.

44. To stop the mounting legal fees, on both sides, Beasley nonsuited his lawsuit, *without prejudice*, on October 5, 2017, as no counter-claims were pending against him. But after the Dallas court dismissed the case, SIM Dallas, pursued a completely void award of $211,031 against Beasley, forcing again more legal action in appellate court.

45. Peter Vogel, him being a member, advising SIM Dallas into an unreasonable course of litigation, leads to an illegal violation of Texas law, with SIM Dallas transferring memberôs assets to one of its members. Tex. Bus. Code § 22.054 (1), with the potential to lead the Chapter into insolvency. Beasley seeks to have the attorney client relationship, if it actually exists, with member Peter Vogel, enjoined. Tex. Bus. Code § 20.002 (d).

46. Defamation and Tortuous Interference. Rather than resolve the dispute, SIM Dallas embarked on a campaign to defame and disparage Beasley and his software company, Netwatch Solutions, and to tortuously interfere with business and contractual arrangements. Specific acts of defamation to 3rd parties, without privilege, occurred on April 19, 2016; May 8, 2016; October 25, 2016; December 29, 2016; December 31, 2016; February 1, 2017, February 6, 2017; April 6, 2017; August 29, 2017, December 15, 2017, **February 5, 2018**, and at other times in meetings and publications to 3rd parties.

47. SIM Dallas has refused since February 2016 to the date of filing this amendment (February 22, 2018) to meet to mediate or try and resolve the dispute.

48. The damages caused by SIM Dallas are on-going and continue to mount now well past the $1,000,000 mark.

49. Legal fees claimed or owed now are crossing beyond $900,000.

50. Beasley attempted to stop the mounting legal fees and damages with a nonsuit, but SIM Dallas keeps the dispute going ï now with attorneys, like OôBryan and Burns, keeping the fight going to hide their own wrongdoing and malfeasance.

51. Burns and OôBryan are not acting in the best interest of SIM Dallas in authorizing over $500,000 in legal fees and a litigation strategy to cost millions in damages to innocent customers, employees and IT professionals across North Texas.

52. SIM Dallas, and its illegally constituted Board and errant leadership under Burns and OôBryan systematically violate the laws of this State, its own bylaws, and are in effect stealing the funds of the Texas non-profit corporation for personal gain.

53. OôBryan and Burns could easily have convened a meeting of the members in April 2016, either to attempt to remove Beasley from the Board (although no grounds for removal existed), or could have amended the Articles of Incorporation or Bylaws, or direct the Board to stop itôs discriminatory membership practices so as to remove the source of the underlying conflict ï 1) the substantial give away of memberôs assets to non-members in the name of philanthropy and 2) its discriminatory membership practices.

54. However, OôBryan and Burns did not do so. As the Board does not have the power to remove one of its own, they moved, at Burnsôbehest, to expel Beasley as a member. However, a membership in SIM is not a prerequisite for Board membership. Therefore, Beasley remained a member of the Board. Nevertheless, OôBryan and Burns caused the Board to ignore his membership, refused to invite him to meetings, and took the illegal position that Beasley had effectively been removed from the Board.

55. SIM Dallas went as far as to pay for and bring an armed peace officer to the next Board meeting to ensure Beasley remained excluded.

56. Malice. SIM Dallas acted with malice, with a specific intent to hurt Beasley, with an admission to ñnot be niceò and to hurt Beasley in his name, and through his company. As malice, SIM Dallas simply breached a sponsorship contract with Beasleyôs company, and refused to refund the sponsorship fee.

57. SIMôs malice toward Beasley began in 2016 and extends into 2018, with SIM stooping so low as to meet with employees of Beasleyôs company, Netwatch Solutions, to undermine Beasley and his companyôs ability to generate revenue and service its customers.

VI. CAUSES OF ACTION

A. Count 1 – Breach of Contract Against SIM Dallas

58. The Board Agreement, bylaws of the corporation, and oral representations formed a valid contract between Beasley and SIM Dallas. SIM Dallas offered that Beasley serve on the SIM board of directors, at his own personal liability to do so.

Beasley accepted that offer and served on the board in 2013, 2014, 2015, and 2016. SIM Dallas breached that agreement a) when the President felt Beasley was not fulfilling his duties, but failed to ask for Beasleyôs resignation, b) failing to follow its bylaws with respect to Beasley, b) and when a legal dispute occurred, failed to cover Beasleyôs legal expenses in support of the organization with SIM Dallasô insurance carrier. Beasley relied on that agreement, served as a member of the board, and acted in the best interest of the organization with the knowledge that his resignation would be requested if he was not fulfilling his duties, and that his actions to protect the members would be covered by insurance. As a result of SIM Dallasô breach, Beasley has incurred damages.

59. Beasley requests the Court to award him his costs and reasonable and necessary attorneyôs fees, both for trial as well as for successful defense of any appeals.

B. Count 2 – Fraudulent Inducement Against SIM Dallas

60. Or in the alternative to Count 1, SIM Dallas induced Beasley to serve on the board with the false representation that he would be asked to resign if his performance was improper, and that his actions on behalf of the organization were covered under SIM Dallasô insurance. The representations by SIM Dallas were false, and SIM Dallas knew the statements were false, or made the false statements without any knowledge of its truth. SIM Dallas made these false statements with the intent that Beasley act upon the false assertions, and Beasley acted in reliance of those false statements. Beasley suffered damages.

61. Beasley requests the Court to award him his costs and reasonable and necessary attorneyôs fees, both for trial as well as for successful defense of any appeals.

C. Count 3 – Breach of Contract Against SIM Dallas

62. Peter Beasley paid his membership dues for the 2016 calendar year, but after April 19, 2016, SIM Dallas breached its contract and no longer allowed Beasley to enjoy his benefits of membership.

63. Beasley requests the Court to award him his costs and reasonable and necessary attorneyôs fees, both for trial as well as for successful defense of any appeals.

D. Count 4 – Injunction Against Ultra Vires Acts of SIM

64. Plaintiff asserts a derivative claim on behalf SIM. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

65. As pleaded herein, plaintiff has presented these claims to SIM, and SIM refuses to grant redress.

66. Defendant owes duties to SIM Dallas of good faith and due care and to act in the best interests of SIM and its members. Defendant also owes duties of obedience to act in conformity with the organizational documents and law. Defendant has failed to act in good faith, with reasonable care, and in the best interests of SIM Dallas and its members.

a. Injunction ï Appoint a Receiver. Due to SIM Dallas, as controlled by Burns and OôBryan, is unwilling to operate within its bylaws and the laws of this state, and due to it acting in a way to destroy the corporation, Plaintiff seeks the appointment of a receiver, at SIM Dallasô expense, to restore the organization to operate within its bylaws. Further, SIM Dallas, under its current leader, Nellson Burns, is engaging in a litigation defense strategy to defend against his own personal motives, at the expense of the organization, and therefore Plaintiff seeks the appointment of a receiver, at SIM Dallasô expense, to restore the organization to operate within its bylaws.

b. Injunction ï Reinstate Membership and Board Position. The expulsion of plaintiff from membership in SIM Dallas and his removal from the board, as elected by the members, was in violation of the bylaws of SIM Dallas, and implied due process rights and was taken without authority and without a valid organizational purpose. The expulsion and removal is void and ultra vires. Therefore, pursuant to §20.002 of the Texas Business Organizations Code, plaintiff seeks injunctive relief voiding the ultra vires expulsion, and removal, and reinstating his membership, effective as of the date of the purported expulsion. Plaintiff is without adequate remedy at law.

c. Injunction ï Stop Illegal Distribution of Assets to a Member. The contract, if one exists, to obtain services from member Peter Vogel is unreasonable and violates the Texas Business Organizations Code prohibition to not provide dividends to a member. Therefore, plaintiff seeks injunctive relief voiding the ultra vires distribution of member assets to a member.

67. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIM Dallasô bylaws and charter. Plaintiff is without adequate remedy at law.

E. Count 5 – Defamation Against SIM Dallas

68. On December 31, 2016, and at other times, SIM Dallas published a statement, and that statement was defamatory concerning Beasley. SIM Dallas acted with malice, and was negligent in determining the truth of the statement. Beasley suffered damages.

69. February 12, 2017, and August 1, 2017, Beasley put SIM Dallas on notice that their false statements were defamatory, and SIM Dallas has refused, in writing on August 18, 2017, to retract the false statements.

70. SIM Dallasô actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

F. Count 6 – Declaratory Judgment

71. A live controversy exists among the parties to this dispute with respect to rights, status, and other legal relations, and Plaintiff requests this Court to issue a declaratory judgment pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.001 et seq.

a. Declaratory Relief ï Expulsion of Beasley Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, Beasley seeks a declaratory judgment that the April 19, 2016, meeting of the Executive Committee of the SIM violated SIMôs bylaws, violated due process protections under the Texas Constitution and

violated applicable provisions of the Texas Business Organizations Code, such that Beasleyôs purported expulsion was void and of no effect and that his status as both a Board member and a member of SIM were and are unaffected.

b. Declaratory Relief ï Illegally Constituted Board. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, under the bylaws, all subsequent boards are allowed by approval and vote of the prior board. SIM Dallas failed to allow Beasley to vote on the 2017 and 2018 boards, and therefore those subsequent boards are illegally constituted, and the 2016 board remains the valid board.

c. Declaratory Relief ï Actions of Board Subsequent to Beasleyôs Purported Expulsion are Also Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. After the purported expulsion, Beasley informed SIM that the proceedings were void and that he was still entitled under Texas law to notice of all board meetings, and for the right to attend and vote on the matters of the corporation. SIM ignored this demand and continued and continues to operate in violation of state law by refusing to provide Beasley notice and the opportunity to attend Board meetings and vote on Board business. Beasley seeks a declaratory judgment that all actions of SIMôs Board which required a vote since April 19, 2016, were and are void ï unless subsequently ratified by Beasley.

d. Declaratory Relief ï Beasley Remains an Elected Board Member. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, and in violation of the bylaws, Beasley was never removed, by vote of the members, as a board member, with that

ballot being allowed by the 2016 board on which he served. Under state law, directors serve for their term until another valid election occurs, and since no valid election has since occurred, Beasley seeks a declaration that he remains a member of the elected board.

e. Declaratory Relief ï Boardôs Attempt to Donate and Give Away SIMôs Assets Violates SIMôs Bylaws and Organizational Articles. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. Certain members of SIMôs Board have embarked upon a charitable or philanthropic plan simply to donate or give away SIMôs cash, in significant amounts, to non-members. Beasley seeks a declaratory judgment that SIMôs bylaws and articles of incorporation prohibit such charitable donations of SIMôs assets to benefit non-members.

72. Attorneyôs Fees. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.009, Beasley requests the Court to award him his costs and reasonable and necessary attorneyôs fees, both for trial as well as for successful defense of any appeals.

G. Count 7 – Violation of Beasley's Due Process Rights Against Defendant SIM

73. As a member of SIM, plaintiff is entitled to due process rights prior to expulsion, including a meaningful right to be confronted with the grounds of his expulsion, the right to be heard, the right to counsel, and protection against decisions that are arbitrary and capricious or tainted by fraud, oppression, and unfairness. As alleged herein, plaintiff was denied his due process rights.

74. Plaintiff is also entitled to a procedure that scrupulously abides by the organizationôs internal bylaws and rules. The notice for the Board meeting to expel Beasley was sent less than seven days prior to the date of the meeting in violation of the Bylaws. Furthermore, the meeting was illegally constituted because almost half the participants attending by telephone. The notice of the meeting did not provide for attendance by phone, and Beasley was not given the opportunity to attend by telephone. Moreover, the meeting was in violation of Tex. Bus. Orgs. Code § 22.002 because Beasley did not consent to the meeting to the meeting being conducted

telephonically. Furthermore, the members physically present did not constitute a quorum.

75. The bylaws and organic documents of a voluntary association constitute a contract between the association and its members. Plaintiffôs due process rights are both explicit provisions of this contract and terms implied by law. By the acts and omissions alleged herein, SIM has breached its contractual duties to plaintiff. Plaintiff has performed his obligations and has been damaged by the breach.

76. Therefore, plaintiff is entitled to a mandatory injunction voiding the expulsion and reinstating his membership and to actual damages resulting from the breach. Plaintiff is without adequate remedy at law.

77. Plaintiff is further entitled to an award of reasonable and necessary attorneyôs fees incurred in this action on a written contract.

H. Count 8 – Tortuous Interference with Contractual Relationships, Against Defendant SIM Dallas

78. Beasley had a contractual relationship May 2016, with the law firm of Ferguson, Braswell, Fraser, and Kubasta.

79. On May 8, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasleyôs contract for legal representation.

80. Beasley suffered damages, for which he sues.

81. SIM Dallasô actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

I. Count 9 – Tortuous Interference with Contractual Relationships, Against Defendant SIM Dallas

82. Beasley had a contractual relationship August 2016, with the law firm of White and Wiggans.

83. On October 25, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal

representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasleyôs contract for legal representation.

84. Beasley suffered damages, for which he sues.

85. SIM Dallasô actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

J. Count 10 – Tortuous Interference with Contractual Relationships, Against Defendant SIM Dallas

86. Beasley had a contractual relationship August 2016, with the law firm of Dan Jones.

87. On December 29, 2016, SIM Dallas, through its agent Soña Garcia, committed the underlying tort of defamation to interfere with an existing legal representation contract. Soña Garcia, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasleyôs contract for legal representation.

88. Beasley suffered damages, for which he sues.

89. SIM Dallasô actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

K. Count 11 – Tortuous Interference with Contractual Relationships Against Defendants SIM Dallas and Nellson Burns

90. From October 2014 through March 2016, Peter Beasley, through the company he owned 100%, Beasley, had an ongoing contractual and business relationship with Holly Frontier Corporation (HFC), the employer of Nellson Burns ï by virtue of his personal building access badge and network login account to HFCôs computer network.

91. Based on the dispute within SIM about their bylaws, Burns, acting solely in bad faith, with animosity toward Beasley, outside the scope of his legitimate duties as an officer of HFC, and in furtherance of SIMôs desire and intent to punish Beasley

for his opposition to the SIM Boardôs improper use of organizational funds, interfered with the contract and business relationship between Beasley / Netwatch and HFC, caused HFC to shut down Beasleyôs access to HFCôs computer system, and caused HFCôs employees not to communicate with Beasley.

92. **October 2017, HFC ultimately terminated Nellson Burns as their Chief Information Officer for his interference and for embroiling them in this fight.**

93. As a direct and proximate result of Burnsô wrongful and tortious interference with the contractual and business relationship between Netwatch and HFC, Beasley has sustained actual damages in an amount to be determined at trial.

94. Burnsô actions, individually and as an agent of SIM Dallas were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas and Burns in an amount to be determined at trial.

L. Count 12 – Business Disparagement Against Defendants SIM

95. As 100% owner of Netwatch Solutions Inc., Beasley has standing to bring forward a business disparagement claim without the formal intervention of Netwatch Solutions Inc.

96. From March 2016, to the present, SIM Dallas has published disparaging words about Netwatchôs economic interests.

97. The disparaging words were false or in some instances false by implication or innuendo.

98. SIM Dallas published the false and disparaging words with malice.

99. SIM Dallas published the words without privilege and had a requisite degree of fault.

100. As a direct and proximate result of SIM Dallasô disparagement, Netwatch has incurred general damages to its reputation and special damages in the form of lost revenue and profits from its relationship with HFC, lost business opportunities with SIM members, lost profits, and a diminution in the value of Netwatch as a going concern. Netwatch has incurred losses in expenses incurred trying to restore Netwatchôs reputation.

101. SIM Dallasô actions were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

M. Count 13 – Breach of Duties/Ultra Vires Acts Against Defendants Burns and O'Bryan

102. Plaintiff asserts a derivative claim on behalf SIM Dallas. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

103. As pleaded herein, plaintiff has presented these claims to SIM Dallas, and SIM Dallas refuses to grant redress. Furthermore, any other demand would be futile because SIM Dallas is controlled by OôBryan and Burns.

104. Defendants Burns and OôBryan owe duties to SIM of good faith and due care and to act in the best interests of SIM Dallas and its members. Defendants also owe duties of obedience to act in conformity with the organizational documents and law. Defendants have failed to act in good faith, with reasonable care, and in the best interests of SIM and its members.

105. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIMôs bylaws and charter against Burns and OôBryan and award actual damages 1) in at least the amount of membership funds wrongfully distributed to non-members, 2) any funds wrongfully distributed to attorney Peter Vogel, 3) any SIM Dallas funds paid in the individual defense of the lawsuit between Nellson Burns and Netwatch Solutions, 4) and all costs and attorneyôs fees incurred by SIM Dallas in the defense of the ultra vires and illegal actions of SIM Dallas which Nellson Burns and Janis OôBryan pursued. Plaintiff is without adequate remedy at law.

106. Plaintiff further requests that SIM Dallas be awarded its attorneyôs fees incurred in this derivative action pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 because the Articles and Bylaws constitute a contract among the corporation and its members, and Burns and OôBryan have breached that contract by their actions alleged herein. Plaintiff requests under the principles of equity that any attorneyôs fees awarded be distributed to him personally to avoid unjust enrichment and because this action has conferred a substantial benefit on the corporation.

VII. ATTORNEY FEES

107. Plaintiff seeks to recover attorney fees as authorized under declaratory judgment, fraud, and breach of contract statutes.

VIII. CONDITIONS PRECEDENT

108. All conditions precedent to plaintiffôs claim for relief have been performed or have occurred.

IX. CONCLUSION AND PRAYER

109. For these reasons, plaintiff asks that the Court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

a. Actual damages.

b. Declaratory Judgment.

c. Injunctive Relief.

d. Appointment of a Receiver.

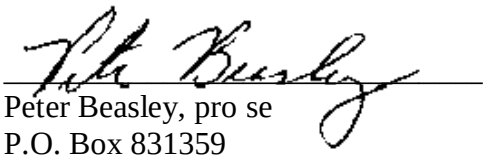
e. Prejudgment and postjudgment interest.

f. Court costs.

g. Attorneyôs fees and costs as are equitable and just.

h. All other relief to which plaintiff is entitled.

Respectfully submitted,



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Tab C

DENY and Opinion Filed May 15, 2019.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00422-CV

IN RE PETER BEASLEY, Relator

Original Proceeding from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-05278

MEMORANDUM OPINION

Before Justices Myers, Molberg, and Nowell
Opinion by Justice Molberg

In this original proceeding, relator complains of the trial court's December 11, 2018 order granting a motion to declare relator a vexatious litigant. In the order, the trial court granted the motion, declared relator a vexatious litigant, ordered relator to post a $422,064.00 bond as security pursuant to section 11.055 of the civil practice and remedies code, and ordered that the case be dismissed with prejudice if relator failed to post the bond within thirty days of the December 11 order pursuant to section 11.056 of the civil practice and remedies code. The order also prohibits relator from filing any new, pro se lawsuits in Texas without first receiving permission from the appropriate local administrative judge pursuant to section 11.101 and 11.102 of the civil practice and remedies code. Relator seeks a writ of mandamus directing the trial court to vacate the December 11 order.

Mandamus is an "extraordinary remedy, not issued as a matter of right, but at the discretion of the court." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004) (orig. proceeding). It is a means for correcting blatant injustice that will otherwise escape appellate review. *In re Reece*, 341 S.W.3d 360, 374 (Tex. 2011) (orig. proceeding). A relator seeking relief by mandamus has the burden of establishing the trial court clearly abused its discretion and he has no adequate remedy by appeal. *In re Prudential*, 148 S.W.3d at 135–36. "An appellate remedy is 'adequate' when any benefits to mandamus review are outweighed by the detriments." *Id.* at 136.

Based on the record before us, we conclude relator has not shown he is entitled to the relief requested because he has an adequate remedy by appeal. Relator had a right to appeal the portion of the order requiring relator to obtain permission to file new lawsuits in Texas because pre-filing orders are subject to interlocutory appeal. TEX. CIV. PRAC. & REM. CODE ANN. § 11.101(c); *Nunu v. Risk*, 567 S.W.3d 462, 466–67 (Tex. App.—Houston [14th Dist.] 2019, Rule 53.7(f) motion granted) (collecting cases and concluding section 11.101(c) authorizes an interlocutory appeal of a pre-filing order). As for the portion of the order declaring relator a vexatious litigant and requiring him to post a bond, relator has not shown why an appeal of that order provides an inadequate remedy. *See In re Balistreri-Amrhein*, No. 05-18-00633-CV, 2018 WL 2773263, at *1 (Tex. App.—Dallas June 11, 2018, orig. proceeding) (denying petition seeking vacatur of order declaring relator vexatious litigant because record was incomplete and relator had an adequate remedy by appeal) (citing *In re Jackson*, No. 07–15–00429–CV, 2015 WL 8781272, at *1 (Tex. App.—Amarillo Dec. 11, 2015, orig. proceeding) (mem. op.) (mandamus denied because relator had adequate remedy by appeal where vexatious litigant order would not render upcoming trial null or wasteful and order would not evade appellate review)). Accordingly, we deny relator's

petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Ken Molberg/
KEN MOLBERG
JUSTICE

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Tab D

FILED
DALLAS COUNTY
7/11/2018 6:44 PM
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DISTRICT CLERK

Cause No. DC-18-05278

PETER BEASLEY, PLAINTIFF, v. SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN; and NELLSON BURNS DEFENDANTS.	≈	IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS 162nd JUDICIAL DISTRICT

Plaintiff's 1st Amended Response to Defendant's Vexatious Litigant Motion, Motion for Sanctions and Request for Findings of Fact

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Plaintiff, Peter Beasley, and files this 1st Amended Response to Defendant's April 19, 2018, Vexatious Litigant Motion, with their supplements from May 14, and July 5, 2018, and brings forward a Motion for Rule 13 Sanctions and a Request for Findings of Fact:

1. Peter Beasley, in no way, is a vexatious litigant.

2. To the contrary, Mr. Beasley is an experienced, very accomplished litigant, who, with and without the use of counsel, follows the rule of law, seeks to resolve conflicts through mediation, minimizes the cost of legal disputes, and who fervently defends his American-born civil rights:

   a. to petition the courts,

   b. to appear pro se or with counsel, and

   c. to enjoy due process and due course of law.

3. **If Beasley sues, defends a lawsuit, or otherwise engages in a legal proceeding, with or without counsel, he often prevails or obtains meaningful benefits**.

4. However, Mr. Beasley is not a lawyer. He does not have a formal legal education and, quite admittedly, he has faced monumental adversity in a few legal proceedings when faced with abusive opposing counsel who tell lies and who shirk their professional responsibilities.

MOTION FOR SANCTIONS

5. Defendant's vexatious litigant motion is groundless, non-timely, barred for many reasons, and presented solely for the purpose of a delay, for which sanctions should lie. Tex. R. Civ. P. 13.

6. In particular, **Defendant's 1st and 2nd Supplemental Motions are utterly groundless**.

7. Defendants filed their motion on April 19, 2018, that being 93 days after filing an Answer, and set the motion for a hearing on July 19, 2018; **over 90 days later** – imposing an automatic stay in the proceedings, for no other purpose but for an impermissible delay to avoid discovery.

8. In violation of Rule 88, Defendants sought to prevent answering Plaintiff's discovery requests by filing a Motion for a Protective Order on February 16, 2018 – requesting the court:

> "issue an order protecting Defendants from discovery **while *Defendants' Motion to Transfer Venue is pending***."

9. The motion to transfer venue was decided on April 18, 2018 – which eliminated defendant's grounds for protection. So, on April 19, Defendants filed a groundless "vexatious litigant" motion — to further seek an improper resistance to discovery.

10. In keeping with their obstructionist tactics to further avoid discovery, now violating both the civil rules of procedure[1] and criminal laws[2] of this state, defendants have also ignored Beasley, as a private citizen's requests for records of a Texas non-profit corporation under the Non-Profit Corporation Act. Tex. Bus. Org. Code § 22.353.

---

[1] Discovery shall not be abated or otherwise affected by pendency of a motion to transfer venue. Tex. R. Civ. P. 88.
[2] Misdemeanor to refuse to provide requested records. Tex. Bus. Org. Code § 22.354.

11. **The Society of Information Management will one day have to answer for their bad acts, in this forum or under scrutiny by the media**.

12. Defendants and their counsel, as listed contemporaneously in this document, use intentionally false legal arguments, proffer false facts, and take impermissibly inconsistent legal positions to perpetrate their improper delay in the discovery process.

13. Defendants and their counsel should be sanctioned. Tex. R. Civ. P. 13; 215.2(b).

REQUEST FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW

14. The vexatious litigant statute provides a careful balancing of rights of the individual against the rights of the public. As such, the specifics of the statute must be specifically followed, and courts are required to make evidentiary findings of fact to uphold any judgment of vexation. *Willms v. Americas Tire Co.*, 190 S.W.3d 796, 801 (Tex. App.-Dallas 2006, pet. denied).

15. Plaintiff requests findings of facts and conclusions of law pursuant to Rule 296.

16. If defendant's motion were to be upheld, plaintiff requests specific findings of fact that:

a. Defendant's January 16, 2018, Motion to Transfer Venue was an Answer to the foregoing lawsuit.

b. Defendant's April 19, 2018, vexatious litigant motion was filed beyond the 90-day limit provided by statute.

c. Defendants paid plaintiff's filing fee required by the Dallas District Clerk to institute the lawsuit against the defendant in Dallas District Court.

d. Defendants provided no conclusive evidence that Beasley had no probability to prevail on all of his claims in this lawsuit.

e. State which grounds under the vexatious litigant statute the court found as meeting the requisite criteria.

17. If defendant's motion were to be denied, plaintiff requests specific findings of fact that:

a. Defendant's alleged grounds under C.P.R.C. § 11.054(1) in ¶ B, page 17, in their April 19, 2018 motion, filed by their counsel, rely on false facts and false legal arguments.

b. Defendant's alleged grounds under C.P.R.C. § 11.054(2) in ¶ C, page 19, in their April 19, 2018 motion rely on false facts and false legal arguments.

c. Defendant's April 19, 2018, vexatious litigant motion filed by their counsel, was groundless, for the purpose of delay.

d. Defendant's May 14, 2018 added supportive facts in their 1st Supplement to the vexatious litigant motion filed by their counsel, were irrelevant and groundless.

e. Defendant's July 5, 2018 added supportive facts in their 2nd Supplement to the vexatious litigant motion, filed by their counsel, were irrelevant and groundless.

f. Defendant's and their counsel filed their vexatious litigant motion and supplements for the purpose of delay.

DEFENDANT'S VEXATIOUS LITIGANT MOTION IS GROUNDLESS

Introduction

18. Defendant's motion is not timely filed – filed after the 90-day deadline.

19. Defendant's motion is estopped by their own arguments and inconsistent actions.

20. Defendant's motion is groundless as they have sued the Plaintiff, making him a defendant.

21. There are no grounds to find plaintiff vexatious.

a. Defendants cannot show there is no probability Beasley can prevail.

b. CPCR § 11.054 (1) fails.

c. CPCR § 11.054 (2) fails too.

22. Defendants unconstitutionally attempt to use the vexatious litigant statute against Beasley to summarily dismiss his lawsuit.

23. Opposing counsel have no authority to defend this lawsuit nor to bring this claim.

The Motion is Not Timely Filed

24. When answering a lawsuit, a defendant may make a special or general appearance. Rule 120a defines a "special appearance" and Rule 85 defines the contents of an "answer".

25. By rule, defendants answered the lawsuit by making a general appearance on January 16, 2018, by filing a motion to transfer venue. Tex. R. Civ. P. 85.

26. The vexatious litigant statute defines, "On or before the 90th day after the date the defendant files the original answer or makes a special appearance", a defendant may file a motion to declare a plaintiff as vexatious. Tex. Civ. Prac. & Rem. Code § 11.051.

27. Defendant's January 16, 2018, motion to transfer venue was an answer making April 16, the deadline after which defendants could no longer file vexatious litigant motions. *Id*.

28. In result, Defendant's April 19, 2018, vexatious litigant motion was not timely, it being filed 93 days after their answer, *See*, *Spiller v. Spiller*, 21 S.W.3d 451, 454 (Tex.App.-San Antonio 2000, no pet.) (holding section 11.051 motion filed outside ninety-day period was untimely), where nothing implies that a defendant must first "answer". *See*, *Brown v. Tex. State Bd. of Nurse Examiners*, No. 03-05-00508-CV, 2007 WL 3034321 (Tex. App.-Austin, Oct. 18, 2007, pet. denied).

29. Defendant's April 19, motion was too late.

30. These defendants should also not garner any sympathy for being late.

31. In June 2016, defendants tried unsuccessfully to "declare" plaintiff as vexatious, but withdrew the motion before the court ruled against them in a hearing, with lead counsel Bragalone saying:

> MR. BRAGALONE: And Judge, we do have a problem with the vexatious litigant statute. I argued this earlier. I know it's not terribly relevant, but if you'll just allow me to remind you. You can't discover that you're defending a Peter Beasley in 90 days. And there's a flaw in the statute. But we had to withdraw because we didn't get the motion on file --

32. Now, defendants cannot complain about being late – where they could have filed the vexatious litigant motion on "Day One" of being sued in Collin County. Instead, in a fashion that defendants believe ONLY JUDGE MOORE WOULD GRANT THEIR MOTION, they did not bring the claim to Judge Wheless, Judge Roach, or to Judge Goldstein.

33. The motion is not timely and should be denied.

34. Further, defendants and their counsel know the motion is late – as they tried once before getting around not bringing a timely motion. Defendant's claim is barred by their own arguments. Their motion is not timely filed.

35. Further, the untimely motion was filed solely for a delay and to avoid the discovery process. Sanctions should lie against them. Tex. R. Civ. P. 13.

Defendants are Estopped from Bringing the Claim

36. Even if the motion were timely filed, defendant's claim is estopped by defendants paying plaintiff's transfer fee (in Collin County) and paying plaintiff's filing fees (in Dallas County), where they cannot now complain of being sued vexatiously. A party is estopped from complaining of error in the trial court when the error occurred at the party's request. *See Shafer v. Bedard*, 761 S.W.2d 126, 129 (Tex.App.— Dallas 1988, orig. proceeding). All but for defendant's consent, them paying the transfer and filing fees they now find themselves sued in Dallas County.

37. Defendant's vexatious litigant claim is barred by the doctrine of consent.

38. Defendant's vexatious litigant claim is further barred by the doctrine of laches. Based on defendant's delay and choice to litigate various issues in Collin County, and not immediately file the vexatious litigant motion, plaintiff did not file a motion for summary judgment to defeat the counter-claim nor to advance his claims.

Defendants have Sued Plaintiff; There is No Such Thing as a Vexatious Defendant

39. A careful examination and hearing will show that Defendants (and their counsel) are the protagonists of this dispute – not the plaintiff.

40. Before the case was ordered transferred to Dallas County, no defendant while the action was in Collin County moved to find Beasley a vexatious litigant.Also while in Collin County, defendant Nellson Burns counter-sued Beasley, making Beasley a counter-defendant.

41. But Beasley did not pay the transfer fee or pay to refile his lawsuit in Dallas County. **Beasley did not file this lawsuit in Dallas County, defendants did**. Beasley has not set any hearings in Dallas County "to maintain" this lawsuit, other than to ensure he has a fair tribunal to

determine the vexatious litigant motion. He has not pursued any discovery, sought to compel discovery, or to seek any orders of the court.

42. **Although Beasley makes no complaint about being placed into Dallas District Court by defendants**, but with them paying the filing fee, in effect made them the party which brought the lawsuit into court. The purpose of Chapter 11 is to restrict frivolous and vexatious litigation. *See Harris v. Rose*, 204 S.W.3d 903, 905 (Tex. App.-Dallas 2006, no pet.). The legislature sought to strike a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit. *Willms. Id.* at 804.

43. It is the defendants who filed their counter-suit against Beasley in Dallas County and admittedly filed Beasley's counter-suits against them.

44. There is no provision to hold a counter-defendant vexatious, as the statute clearly provides only for a defendant to find a plaintiff "who commences or maintains a litigation *pro se*" vexatious. Tex. Civ. Prac. & Rem. Code § 11.001(5); 11.051. Beasley is entitled to defend himself, with any compulsory counter-claims, without being declared vexatious and without being required to post security.

Defendants Cannot Complain of Beasley's Actions as a Pro Se Litigant

45. Defendants also cannot complain about Beasley being *pro se* when they actively and systematically obstruct Beasley's ability to have legal representation.

46. The vexatious litigant statute applies only against an individual who commences or maintains a litigation *pro se*. Tex. Civ. Prac. & Rem. Code § 11.001(2).

47. But this lawsuit includes the claim that Defendants have and continue to tortuously interfere with Beasley's ability to obtain counsel.

48. Defendants cannot benefit from a condition they caused to occur.

The Vexatious Litigant Statute is Unconstitutional

49. The statute, on its face and as applied to Beasley, is unconstitutional for various reasons.

a. The definition "'Litigation' means a civil action commenced, maintained, or pending in any state or federal court" **is unconstitutionally vague and overbroad**. Tex. Civ. Prac. & Rem. Code § 11.001(2). A statute prohibiting conduct that is not sufficiently defined is void for vagueness. *In re Fisher*, 164 S.W.3d 637, 655 (Tex.2005); *see Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); *Commission for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex.1998). It is **unclear whether original proceedings or post-judgment actions in appellate courts** ARE OR ARE NOT civil litigations[3]. The Texas Courts of Appeal are split on this determination, which underscores a non-lawyer's ability to meaningfully know the definition of a "*civil litigation*". To succeed on a mandamus action, the relator must show he has no adequate remedy on appeal, and upon that failing he may not be entitled to relief – regardless of whether his claim may ultimately be decided in his favor. Further, the bar is high to show in a mandamus action that a judge abused his or her discretion or had a ministerial duty to act, but failed. Again, a *pro se* relator's misunderstanding of the standard for appellate review may not be a sign of vexation, but merely that of making an error at law. It is unconstitutional that a mistake in the law by a non-lawyer is penalized differently than a mistake in the law by a person who has the benefit of a formal legal education. It will often be unclear to a litigant, or even to a determining court, that a failed mandamus action is a "civil litigation" that counts toward the vexatious litigant standard. The courts of appeal have inherent authority to sanction any litigant that abuses the judicial process, or one who file groundless petitions, or one who makes misleading

[3] Courts are free to ignore legal holdings from other states. *Penrod Drilling Corp. v. Williams*, 868 S.W.2d 294, 296 (Tex. 1993).

statements, Tex. R. App. P. 52.11. The appellate courts are in the exact position to determine if an original proceeding should count as being vexatious. Further, by their discretionary nature and without the requisite right to an appeal mandated by the Texas Constitution[4], an original proceeding does not clearly meet the definition of a 'civil litigation', which guarantees at least one appeal in every controversy at law. A statute is unconstitutionally overbroad statute if it "sweeps within its scope a wide range of both protected and non-protected expressive activity." *Hobbs v. Thompson*, 448 F.2d 456, 460 (5th Cir.1971). The court determining whether a litigant is vexatious is not in a position to determine if an original appellate proceeding was filed in good faith, whether it was not frivolous, or whether it was denied for a filing error or denied simply due to making an error at law. Lastly, the petition would need to be granted, but then relief denied to be finally adversely determined against the plaintiff. A denied petition for mandamus is rarely a final determination (i.e. with prejudice), unless stated in the accompanying opinion, as by their very definition, the petition may be refiled in the Court of Appeals or the Supreme Court, or the issue pursued later on a direct appeal.

b. The definition "'Litigation' means a civil action commenced, maintained, or pending *in any state or federal court*" is **unconstitutionally overbroad**. *See*, *Id*. Tex. Civ. Prac. & Rem. Code § 11.001(2). All litigants are free to use the laws of the courts in every U.S. jurisdiction to advance their claims, when done in good faith. **The Texas Legislature is without authority to penalize a litigant's actions in a legal proceeding in Illinois, another state** – Cook County in particular. The vexatious litigant statute exempts actions in municipal court and small claims court, but what about Cook County Chancery Court, Cook County Circuit Court, and Cook County Probate Court, and the bazillion other courts and tribunals in Texas and in other states and

[4] Tex. CONST., art. V.

within the federal government – a federal patent prosecution, defense of a tax liability in U.S. tax court, a federal bankruptcy, defense of an employee's right to unemployment, pursuit of a Texas attorney general's opinion, defense of a sales tax liability, or civil actions with the State Board of Disciplinary Appeals or with the State Commission on Judicial Conduct? The Texas Legislature is clearly without knowledge of the checks and balances and due process afforded Texas litigants in other jurisdictions. The Texas vexatious litigant statute, by considering legal actions outside of their jurisdiction, is unconstitutionally overbroad.

c. The definition "'Plaintiff' means an individual who commences or maintains a litigation pro se" **is unconstitutionally vague**. It could not be clear that Beasley, serving as a probate administrator representing the Heirs in his uncle's estate in Illinois could be classified as a being *pro se*.

d. The phrase "finally determined adversely to the plaintiff" **is unconstitutionally vague**. Tex. Civ. Prac. & Rem. Code § 11.054(1)(A). An action dismissed for want of jurisdiction, dismissed for lack of subject matter jurisdiction under an exception, remanded from federal court to state court, removed from state court to federal court, dismissed without prejudice, dismissed for improper venue, dismissed with prejudice to affect a settlement agreement, denied but on appeal, denied with time yet to appeal, denied but interlocutory, or for which **provides some benefit** to plaintiff cannot be reasonably ascertained as *conclusively being finally determined adverse to the plaintiff*. e.g. *see*, ¶ 71, *supra*. **Suing to effect a settlement or to prevent future aggression are legitimate purposes of litigation**.

Plaintiff's Claims are Meritorious – 1st Prong Cannot Be Met

50. Defendants have not and cannot show that plaintiff has no reasonable probability of prevailing in all of his claims. They attempt to misstate and minimize plaintiff's claims.

51. Defendants, only in the 162nd Dallas District Court before Judge Moore, attempt to use the "vexatious litigant" label as a mechanism to *summarily* win this lawsuit and dismiss Beasley's claims. However, the vexatious litigant statute is not a substitute for special exceptions, summary judgments, and motions to dismiss or for declaratory actions – with their protections of notice, affording due process, allowing hearing, and with determinations on the merits or applicable rules to dismiss a claim. Under the guise of a mere hearing, this court is without authority to usurp the due process protections of Rule 91a (to dismiss a claim), Rule 166a (for summary judgment), or of Rule 91 to afford a plaintiff to replead and state a valid claim.

52. In the vexatious litigant hearing, Beasley is not required to prove each and every element of his claim; the burden is on Defendants, and they have no final judgments (i.e. for res judicata purposes) to support their claim, where even their tortured reading of the November 3, 2017, attorney fee order ("prevailing party on *Peter Beasley's declaratory judgment claims* act") provides defendants no affirmative benefit against any subsequent litigation.

53. Defendant Nellson Burns has not prevailed on his claim against Beasley.

Burns' Claim	Final Prior Judgment	Probability of Success
Defamation. Alleging Beasley falsely claimed Burns was fired from his employment at HollyFrontier Corporation because of this underlying conflict.	No prior determination.	Burns has no probability of success. Beasley merely repeated statements Burns' own lawyer stated in open court.

54. Contrary to what defendant's claim, SIM Dallas has not already prevailed on Peter Beasley's declaratory claims, and defendants claim is false, for which they should be sanctioned. Tex. R. Civ. P. 13. Further, Defendant's ongoing refusal to provide discovery responses undermines their argument that Beasley cannot prevail, and in fact suggests the opposite.

Beasley's Claim	Final Prior Judgment	Probability of Success
Breach of Contract	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Fraudulent Inducement	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Breach of Contract	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative injunctive claim to appoint a receiver.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative injunctive to prevent distribution of member's dues to non-members.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Tortious interference with Beasley's contract for legal representation.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative claim that Janis O'Bryan pay money to SIM.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative claim that Nellson Burns pay money to SIM.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Declaratory judgment – expulsion was void.	None.	Available.
Declaratory judgment – illegally constituted board.	None.	Available.
Declaratory action that all actions by the illegally constituted board are void.	None.	Available.
Declaratory action that Beasley is still a SIM Director.	None.	Available.
Declaratory judgment that substantial give-away of member's assets to non-members are ultra-vires acts.	None.	Available.
Denied due process in expulsion.	None.	Available.
Defamation.	None. New claims.	Available. Relies on questions of fact for a jury to decide.

Tortious interference with business contract.	None.	Available. Relies on questions of fact for a jury to decide.
Business disparagement.	None.	Available. Relies on questions of fact for a jury to decide.
Claim for attorney fees.	None. New claim.	Available. Relies on questions of fact for a jury to decide.

55. The request to find plaintiff vexatious should be denied, *with prejudice*, as plaintiff's claims are sustainable and will be found meritorious.

Vexatious Litigant Criteria § 11.054(1) Fails

56. The vexatious litigant statute serves to protect litigants from plaintiffs who repeatedly sue a defendant who has already prevailed against the plaintiff. None of defendant's cited prior litigations show a pattern of vexation – *against a defendant*.

57. There is no vexatious history of five litigations in the preceding seven years before the filing of the motion that have been finally determined adversely to the plaintiff. The review period would be **April 19, 2018 back to April 20, 2011**.

Defendant's Claim	Outcome	Relation to § 11.054(1)
#1. Peter Beasley v. Susan M. Coleman; Randall C. Romei, Case No. 1:13cv1718 in the USDC Northern District of Illinois. March 6, 2013. 42 U.S.C. §§ 1983, 1985, and 1986 conspiracy against rights and attorney malpractice claims.	Dismissed for want of subject matter jurisdiction – Probate Exception to federal jurisdiction; remanded to state court.	Not relevant because: • Not finally determined adversely to Beasley • Not representing his own interests[5] • Unconstitutional to count a litigation in another jurisdiction other than Texas state court

[5] In *propria persona* is synonymous with *pro se*. In *propria persona* is defined as: in one's own proper person. *Coyle v. State*, 775 S.W.2d 843, 845 (Tex.App.-Dallas 1989, no pet.); Black's Law Dictionary 712 (5th ed.1979).

#2. Peter Beasley v. John Krafcisin; John Bransfield; Ana-Marie Downs; Hanover Insurance Company, Case No. 3:13cv4972 in the USDC Northern District of Texas. December 20, 2013. 42 U.S.C. §§ 1983, 1985, and 1986 conspiracy against rights and declaratory judgment claims.	Dismissed for want of subject matter jurisdiction – Younger abstention to federal jurisdiction and improper venue.	Not relevant because: • Not finally determined adversely to Beasley • Unconstitutional to count a litigation in another jurisdiction other than Texas state court
#3. Peter Beasley v. Seabrum Richardson and Lamont Aldridge, Cause No. DC-13-13433 in the 192nd Judicial District Court of Dallas County, Texas. Breach of contract.	Voluntary nonsuit. Dismissed, with prejudice.	
#4. In re: Peter Beasley, No. 05-15-00276, Texas Fifth Court of Appeals. March 10, 2015. Seeking to void the court's order to set-aside deemed admissions the day before trial over ten months after they were deemed, when Defendant admitted conscious indifference, Defendant had pursued no discovery during the discovery period, Defendant had not responded to Plaintiff's discovery, Defendant had ignored the court's orders, and Plaintiff demonstrated he would be prejudiced if the admissions were stricken over a year after the underlying tort had occurred.	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley • Unconstitutional to count a discretionary original proceeding

#5. Peter Beasley v. Society for Information Management, Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, Texas. March 17, 2016. Declaratory judgment, due process, business disparagement, and tortious interference claims.	Voluntary nonsuit – dismissed without prejudice. Currently under appeal.	Not relevant because: • Not finally determined adversely to Beasley – DIRECT APPEAL PENDING • Not maintained two years before a nonsuit[6] • Benefit of counsel[7]
#6. In re: Peter Beasley, No. 05-17-01365-CV, Texas Fifth Court of Appeals. November 29, 2017. Seeking to vacate Judge Moore's arguably void November 3rd attorney fee order	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal IS PENDING[8] • Post-judgment appeal. • Unconstitutional to count a discretionary original proceeding
#7. In re: Peter Beasley, No. 17-1032, Supreme Court of December 18, 2017. Seeking to vacate Judge Moore's arguably void November 3rd attorney fee order	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal IS PENDING[8] • Post-judgment appeal. • Unconstitutional to count a discretionary original proceeding
#8. In re: Peter Beasley, No. 05-18-00382-CV, Texas Fifth Court of Appeals, filed on April 5, 2018. Seeking to vacate Judge Roach's transfer of venue to	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal • Not finally determined adversely to Beasley before April 19, 2018.

[6] *See*, *Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 700 (Tex. App.-El Paso 2011, no pet.) (counting only involuntary dismissals)
[7] *See*, *Spiller v. Spiller*, 21 S.W.3d 451, 454 (Tex.App.-San Antonio 2000, no pet.)
[8] *Goad v. Zuehl Airport Flying Community Owners Ass'n, Inc.* No. 04-11-00293-CV (Tex.App.—San Antonio, May 23, 2012, no pet.)("an appeal of a judgment in a civil action is not a separate "litigation" as that word is used in Chapter 11"). The statute by its terms does not apply to post-judgment proceedings. *See*, *In re Florance*, 377 S.W.3d 837, 839 (Tex. App.-Dallas 2012, orig. proceeding).

keep this current lawsuit away from Judge Moore – in hopes of getting an unbiased tribunal and this conflict moved forward to a permanent resolution.		• Unconstitutional to count a discretionary original proceeding
#9. In re: Peter Beasley II, No. 05-18-00395-CV, Texas Fifth Court of Appeals. April 8, 2018. Seeking to require Judge Roach's to allow a Rule 12 challenge to defendant's attorneys and keep this current lawsuit away from Judge Moore – in hopes of getting an unbiased tribunal and this conflict moved forward to a permanent resolution.	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal • Not finally determined adversely to Beasley before April 19, 2018. • Unconstitutional to count a discretionary original proceeding
#10. In re: Peter Beasley III, No. 05-18-00553-CV, Texas Fifth Court of Appeals. May 14, 2018. Seeking to require Judge Moore to grant or refer a disqualification and recusal motion.	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal • Not commenced before April 19, 2018. • Unconstitutional to count a discretionary original proceeding
#11. In re: Peter Beasley IV, No. 05-18-00559-CV. May 15, 2018. Seeking to vacate Judge Goldsteins' transfer of venue to keep this current lawsuit away from Judge Moore – in hopes of getting an unbiased tribunal and this conflict moved forward to a permanent resolution.	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal • Not commenced before April 19, 2018. • Unconstitutional to count a discretionary original proceeding

58. The request to find plaintiff vexatious under CPCR § 11.054(1) fails and should be denied, ***with prejudice***.

59. There can be no doubt that litigations #5 - #11 are inapplicable, are based on false facts, and are made with patently false legal arguments. Sanctions should lie. Tex. R. Civ. P. 13.

Vexatious Litigant Criteria § 11.054(2) Fails Too

60. No claim has been finally determined against the plaintiff in favor of defendants which plaintiff is relitigating. The only determination in favor of defendants is an order for attorney fees, ***which is not finally determined***, as it is under direct appeal.

a. Plaintiff is not relitigating the validity of the attorney fee order.

b. The attorney fee order does not determine or conclude any claim, controversy, or any issues of fact which plaintiff is relitigating.

61. Further, it is well established law that interlocutory orders on matters that are merely collateral or incidental to the main suit do not operate as res judicata or collateral estoppel. *See Old v. Clark,* 271 S.W. 183, 185 (Tex.Civ.App.- Dallas 1925, no writ). Application of collateral estoppel also requires that there be a final judgment. *See Gareis v. Gordon,* 243 S.W.2d 259, 260 (Tex.Civ.App.- Galveston 1951, no writ). See, Exhibit A.

Defendant's Claim	Prior Final Determination	Relation to § 11.054(2)
#1. Repeatedly litigating and/or attempting to relitigate the claims related to his expulsion.	This issue has NEVER, never, never, EVER been determined.	No re-litigation.
#2. The application of the attorney-client privilege to communications between defense counsel and SIM-DFW.	No final determination – only an *erroneous*[9] interlocutory finding ever existed, which is no longer valid.	No re-litigation.

[9] See, Exhibit A.

#3. "Witness statements" of members of SIM-DFW must be secured via properly noticed depositions.	No final determination – only an *erroneous*[9] interlocutory finding ever existed, which is no longer valid.	No re-litigation.
#4. Recusal of the Honorable Maricela Moore.	**No final determination**	It is absurd to present a legal argument that a denied recusal motion exists into perpetuity.
#5. Disqualification of Peter Vogel as defense counsel	This issue has NEVER, never, never, EVER been determined.	No re-litigation.
#6. Authority for defense counsel to appear as counsel for SIM-DFW, Janis O'Bryan, and Nellson Burns.	This issue has NEVER, never, never, EVER been determined.	No re-litigation.

62. The request to find plaintiff vexatious under CPCR § 11.054(2) fails and should be denied, ***with prejudice***.

63. There can be no doubt that all of these claims are patently false and are made with patently false legal arguments. Sanctions should lie. Tex. R. Civ. P. 13.

Absolutely No Showing of Vexation

64. Certainly, "any person of reasonable intelligence would be able to discern that if he were to file five lawsuits in seven years, all of which were decided in favor of the opposing party or were determined to be frivolous he may be subject to being labeled a vexatious litigant", *See*, *Leonard v. Abbott*, 171 S.W.3d 451, 457-58 (Tex.App.-Austin 2005, pet. denied), but it is not clear that an appellate original proceeding, challenging a court's ruling, to obtain judicial compliance with a ministerial act, or to challenge the law are civil litigations against an opposing party sufficient enough to warrant holding a litigant as being vexatious.

65. Vexatious litigants in this state have been found with 11 identified of **13 claimed failed lawsuits in seven years**, (Steven Aubrey), *See*, *Aubrey v. Aubrey*, 523 S.W.3d 299, 311 (Tex.

App.-Dallas 2017, no pet.), **26 failed lawsuits** (Tom Retzlaff), *See*, *Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 702-705 (Tex. App.-El Paso 2011, no pet.) and with decades of religations in many federal, state trial courts and appeals courts (Yvonne Brown's 7-year plus attempts to relitgate the revocation of her nursing license), *See*, *Brown*, *Id*. Vexatious litigants often have multiple relitigations against the same defendant after a judgment had been rendered against them. Frequently, there are orders from multiple courts defining motions and lawsuits as frivolous, orders of sanctions, and findings of malicious behavior.

66. Kenneth L. Harris is apparently no stranger to litigation. *see*, *Harris v. Rose*, 204 S.W.3d 903, 905 (Tex. App.-Dallas 2006, no pet.). In a fifteen year period, he has filed thirty pro se lawsuits in Dallas County, and **had been held in contempt of court twelve times**. Neither court orders nor injunctions seem to dissuade Harris from filing lawsuits. When the Unauthorized Practice of Law Committee obtained a permanent injunction prohibiting Harris from engaging in the unauthorized practice of law, Harris violated the injunction and continued to file lawsuits. By 2006, five of Harris' lawsuits had been dismissed with prejudice since 2002.

67. Peter Beasley is not vexatious in his zealous, two-year pursuit to redress the alleged wrongs committed by defendants against him. Defendant's claim that he epitomizes vexatious activity is false, and is a false legal argument.

68. **Beasley steadfastly continues to seek his day in court**.

Unconstitutional to Require Security to Continue His Appeal

69. Plaintiff is not vexatious and the request that he post security to commence, maintain, or cause to maintain any other existing lawsuit or legal action by Peter Beasley, pro se or with an attorney, is unwarranted and is unconstitutional, and should be denied, ***with prejudice***.

70. Defendant's obvious goal with the vexatious litigant motion is to 1) require Beasley to post security in order to maintain his appeal of the November 3, 2017, attorney fee order, 2) dismiss this current lawsuit upon some inability to post security, and 3) to avoid discovery and public ridicule for defendant's misdeeds. Defendants and their many lawyers are trying desparately to hide the truth.

71. But**, Beasley prevailed in his recent *denied* mandamus petition**, No. 05-18-00553, which defined that this court may not order Beasley to post a security to continue his appeal, or to post security to maintain any on-going litigations that preceded the determination of this motion. Exhibit B.

72. The 162nd District Court, Judge Moore, cannot interfere with Beasley's pending appeal to overturn its erroneous prior rulings.

No Authority to Bring the Claim

73. Lastly, opposing counsel has no authority to defend this lawsuit nor to bring the claim. Plaintiff reasserts his pending Rule 12 challenge against lawyers Vogel, Bragalone, and Garcia.

74. Their vexatious litigant motion should be stricken.

Wherefore, plaintiff requests the court deny defendant's vexatious litigant motion, *with prejudice*, enter findings of fact and conclusions of law, and find Defendant's motion was groundless and frivolous, filed in bad faith and for the purpose of delay. Plaintiff asks that defendants and their counsel be sanctioned.

Respectfully submitted,

/s/ Peter Beasley
Peter Beasley
P.O. Box 831359
Richardson, Texas 75083
972-365-1170

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2018, a true copy of the foregoing instrument was served on counsel for defendants, and the electronic transmissions were reported as complete.

/s/ Peter Beasley
Peter Beasley

FRYAR LAW FIRM P.C.

via email pbeasley@netwatchsolution.com

Peter Beasley
President
Netwatch Solutions, Inc.

November 17, 2017

Re: Cause No. DC-16-03141; *Beasely v. Society of Information Management*, in the 162nd Judicial District Court, Dallas County, Texas

Dear Mr. Beasley:

You have asked for my legal opinion as to your right to speak with and contact members of SIM-DFW, in light of the Order of the 162nd District Court regarding such contacts. My opinion, for the reasons stated below, is that you are free to contact those individuals to the same extent as you would be to contact, communicate, or associate with anyone else.

The issue came up in the above-referenced litigation in connection with your attempts to interview and conduct informal discovery of other members of SIM-DFW. Mr. Vogel objected to such contacts on the grounds that these persons were individually represented by him and that you as a pro se party should be required to go through counsel. Legally, Mr. Vogel never represented the individual members; he only represented the organization. However, the Court erroneously accepted Mr. Vogel's position. Second, the ethical rules prohibiting lawyers from contacting represented individuals do not apply to you. Nevertheless, the Court also agreed that your efforts should be though counsel.

On February 22, 2017, the Court signed an Order granting in part and denying in part a motion to compel discovery filed by you. That Order stated in relevant part: "The Court further Orders that Plaintiff's request to speak to members of SIM-DFW is DENIED and any requests to depose SIM-DFW members who are represented by counsel is to be done via request for deposition pursuant to the Texas Rules of Civil Procedure." The Court has broad discretion to regulate discovery; therefore, even though the legal basis for the Order was erroneous, the Court had the power to enter it.

It is important to understand the following: 1. You were not ordered not to contact SIM-DFW members. 2. No temporary injunction was entered against you. 3. The Order is merely a denial of your request and direction from the Court regulating discovery. Nevertheless, based on the expressed attitude of the Judge, and out of an abundance of caution, you treated the Order as though it were a temporary injunction prohibiting contact.

You nonsuited the lawsuit on October 5, 2017. While the Court maintained jurisdiction over collateral matters, the nonsuit ended the proceeding on the merits. The nonsuit necessarily ended the effect of all orders regulating discovery and would have terminated even a temporary injunction had one been entered. Therefore, the Order no longer has any legal effect.

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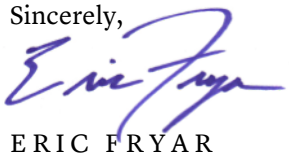
The First and Fourteenth Amendments to the Constitution protect the right of association. Therefore, you are legally free to talk to, contact, and associate with SIM-DFW members. Of course, you may still be subject to liability if your communications violate other legal duties—e.g., if you falsely defame Mr. Vogel to a SIM-DFW member, he might sue you for slander.

I hope this answers your question. Please contact me if you have any further concerns.

Sincerely,



ERIC FRYAR

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DENY and Opinion Filed May 22, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00553-CV

IN RE PETER BEASLEY, Relator

Original Proceeding from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-05278

MEMORANDUM OPINION

Before Justices Francis, Evans, and Schenck
Opinion by Justice Schenck

Before the Court is relator's May 14, 2018 petition for writ of injunction and petition for writ of mandamus. This is the third original proceeding filed by relator since April 5, 2018. In this original proceeding, relator complains that the trial court has taken no action on his May 8, 2018 motion for disqualification and recusal of Judge Maricela Moore and seeks a writ of mandamus directing Judge Moore to act on the motion. Relator also seeks a writ of injunction enjoining Judge Moore from ruling on the motion to designate relator as a vexatious litigant filed by the real parties in interest, from ordering relator to post security to maintain his appeals in this court, and from ordering relator to post security or to obtain permission to appeal any vexatious litigant order that may be entered in the future. For the following reasons, we deny the relief requested.

Writ Jurisdiction

This Court's writ jurisdiction is governed by section 22.221 of the Texas Government Code. This Court "may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against (1) a judge of a district, statutory county, statutory probate county, or county court in the court of appeals district. . . ." TEX. GOV'T CODE ANN. § 22.221(b)(1) (West Supp. 2017). To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *n re ru ential ns. o.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding).

This Court's injunctive powers, however, are more limited. "Each court of appeals ... may issue ... all ... writs necessary to enforce the jurisdiction of the court." TEX. GOV'T CODE ANN. § 22.221(a) (West Supp. 2017). A court of appeals "has no original jurisdiction to grant writs of injunction, except to protect its jurisdiction over the subject matter of a pending appeal, or to prevent an unlawful interference with the enforcement of its judgments and decrees." *tt v. Bell*, 606 S.W.2d 955, 957 (Tex. Civ. App.—Waco 1980, no writ); *see* TEX. R. APP. P. 24.3; *see also o son v. ole an*, No. 01-01-00114-CV, 2002 WL 1340314, at *7 (Tex. App.—Houston [1st Dist.] June 20, 2002, pet. ref'd) (holding that attempts to suspend enforcement of judgment pending appeal are generally within the trial court's authority).

Discussion

Based on the record before us, we conclude relator has not shown he is entitled to the relief requested.

First, relator has not established that the trial court abused its discretion by not taking action on the motion to recuse within the four business days immediately following its filing. Upon notice of the filing of a motion to recuse, a trial judge has only two choices—she must promptly either voluntarily recuse herself or refer the motion to the presiding judge of the administrative

judicial district for action. *n re resley*, No. 05-00-00793-CV, 2000 WL 688239, at *1 (Tex. App.—Dallas May 23, 2000, orig. proceeding) (citing TEX. R. CIV. P. 18a (c), (d) and *reen er Benson is an iel er v. o ell*, 685 S.W.2d 694, 695 (Tex. App.—Dallas 1984, orig. proceeding). "Thus, it is a clear abuse of discretion for the trial judge to not act on a motion for recusal in one of the two required ways." . But the requirement for prompt action does not equate to a mandate for immediate action. *See en. Motors or . v. vins*, 830 S.W.2d 355, 358 (Tex. App.—Corpus Christi 1992, no writ) (a trial judge is permitted to hold a hearing to determine whether to recuse or refer); *see also n re rai* , 426 S.W.3d 106, 107 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding) (a trial court has a reasonable time within which to consider a motion and to rule); *n re Sar issian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding) (same).

Here, relator filed the motion to recuse on Tuesday, May 8, 2018 and filed this petition on Monday, May 14, 2018. He has provided no evidence showing what action, if any, Judge Moore has taken on the motion since its filing. Further, he has presented no evidence that he has brought the motion to the trial court's attention and requested a ruling. As such, relator has not established that the trial judge has refused to act promptly on the motion to recuse and has not established an abuse of discretion. Accordingly, we deny relator's petition for writ of mandamus.

We also deny relator's request for injunctive relief. Relator asks the Court to enjoin the trial court from (1) ruling on the motion to designate relator as a vexatious litigant, (2) ordering relator to post security to maintain his appeals in this court, and (3) ordering relator to post security or to obtain permission to appeal any vexatious litigant order that may be entered in the future. Should the trial court rule on the motion to designate relator as a vexatious litigant, relator is statutorily permitted to appeal that ruling. TEX. CIV. PRAC. & REM. CODE § 11.101(c) ("A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious

litigant"). Further, a vexatious litigant order would not apply to currently pending appeals. TEX. CIV. PRAC. & REM. CODE § 11.101(a) (generally authorizing court to enter order prohibiting person from filing new litigation pro se without permission from local administrative judge when court finds that person is "vexatious litigant" after notice and hearing). Finally, the trial court maintains jurisdiction to determine issues related to supersedeas, and relator has appellate remedies available to him regarding supersedeas orders. TEX. R. APP. P. 24.3, 24.4; *see Bur v. o nson*, 445 S.W.2d 631, 632 (Tex. Civ. App.—El Paso 1969, no writ) ("Both injunction and prohibition do not lie where there is an adequate remedy through the ordinary channels of procedure."). As such, any future actions taken by the trial court as to the vexatious litigant motion or as to supersedeas related to a current appeal do not interfere with this Court's jurisdiction or with this Court's enforcement of its judgments or decrees. We find nothing in this record indicating that an injunction is necessary here.

To the extent relator's requests can be construed as seeking a writ of prohibition, we deny that relief as well. A writ of prohibition is used to protect the subject matter of an appeal or to prohibit an unlawful interference with enforcement of an appellate court's judgment. *ollo ay v. ift ourt of eals*, 767 S.W.2d 680, 683 (Tex. 1989) (orig. proceeding). The writ is designed to operate like an injunction issued by a superior court to control, limit, or prevent action in a court of inferior jurisdiction. . at 682–83. A writ of prohibition has three functions: (1) preventing interference with higher courts in deciding a pending appeal; (2) preventing an inferior court from entertaining suits that will re-litigate controversies already settled by the issuing court; and (3) prohibiting a trial court's action when it affirmatively appears the court lacks jurisdiction. *u le l. o. n . v. al er*, 641 S.W.2d 941, 943 (Tex. App.—Dallas 1982, orig. proceeding).

As discussed above, the trial court's future actions regarding the vexatious litigant motion or supersedeas issues will not interfere with this Court's jurisdiction over a pending appeal.

Moreover, no settled controversy appears in the record, and there is no evidence that the actions relator seeks to prohibit are outside of the trial court's jurisdiction. Relator has, therefore, not established a right to a writ of prohibition.

Accordingly, we deny relator's petition for writ of injunction and deny relator's petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

180553F.P05

Tab E

FILED
DALLAS COUNTY
4/30/2018 12:00 AM
FELICIA PITRE
DISTRICT CLERK

Cause No. DC-18-05278

PETER BEASLEY,	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
SOCIETY OF INFORMATION	§	
MANAGEMENT, DALLAS AREA	§	
CHAPTER, JANIS O'BRYAN, NELLSON BURNS	§	44th JUDICIAL DISTRICT

PLAINTIFF'S 1ST AMENDED ANSWER, GENERAL DENIAL AND AFFIRMATIVE DEFENSES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff/Counter-Defendant, Peter Beasley, and in support of this 1st Amended Answer, General Denial and Affirmative Defenses, states the following:

GENERAL DENIAL

1. Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff/Counter-Defendant generally denies each and every, all and singular, of the material allegations contained in Defendant/Counter-Plaintiff's Original Counterclaim and any supplements or amendments thereto, and demands strict proof thereof.

AFFIRMATIVE DEFENSES

2. Plaintiff/Counter-Defendant hereby states the following affirmative and additional defenses to the Defendant/Counter-Plaintiff's Original Counterclaim (and any supplements or amendments thereto), but do not assume the burden of proof on any such defenses except as otherwise required by law. Plaintiff/Counter-Defendant reserves the right to assert additional defenses and to otherwise supplement or amend this Answer. Each of these defenses is pled in the alternative, as all liability is denied.

- The Defendant/Counter-Plaintiff's vexatious litigant claim is barred by estoppel.
- The Defendant/Counter-Plaintiff's vexatious litigant claim is barred by the doctrine of consent.
- The Defendant/Counter-Plaintiff's vexatious litigant claim is barred by laches.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Plaintiff/Counter-Defendant's statements are true.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Plaintiff/Counter-Defendant's statements are true.

- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, by privilege of statements made in the court of judicial proceedings.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Defendant/Counter-Plaintiff's own acts or omissions caused or contributed to the Defendant/Counter-Plaintiff's alleged injury.
- Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Plaintiff/Counter-Defendant's statements, if any, were made without malice.
- Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because none of the statements claimed by Defendant/Counter-Plaintiff's to be defamatory were authored by Plaintiff/Counter-Defendant.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, by the doctrine of consent.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, by common-law qualified privilege.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Defendant/Counter-Plaintiff's reputation was previously diminished.
- Defendant/Counter-Plaintiff's claim for exemplary damages as part of his defamation claims is barred, in whole or in part, because Defendant/Counter-Plaintiff's failed to comply with the Defamation Mitigation Act.
- Defendant/Counter-Plaintiff's claims for declaratory judgment are barred, in whole or in part, because this court does not have jurisdiction to clarify or modify a judgment from another court.

WHEREFORE: For the foregoing reasons, Plaintiff pray that Defendant Nellson Burns and Defendant SIM Dallas Area Chapter take nothing by way of their claims, that Plaintiff/Counter-Defendant recover his attorneys' fees, costs and expenses as allowed by law, and for such other and further general relief, at law or in equity, as the ends of justice require and to which the evidence may show it justly entitled.

Respectfully submitted,
/s/Peter Beasley
Peter Beasley, pro se
P.O. Box 831359

Richardson, TX 75083-1359
(972) 365-1170
pbeasley@netwatchsolutions.com

Certificate of Service

I hereby certify that on the 29th day of April 2018, a true copy of the foregoing instrument was served on opposing counsel for the defendants by electronic means and the electronic transmissions were reported as complete.

/s/Peter Beasley
Peter Beasley

Tab F

Filed: 3/2/2018 3:06 PM
Lynne Finley
District Clerk
Collin County, Texas
By Tatiana Ortega Deputy
Envelope ID: 22906127

296-05741-2017

CAUSE NO. ~~417-05741-2017~~

PETER BEASLEY,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, JANIS O'BRYAN, NELLSON BURNS,	§	**COLLIN COUNTY, TEXAS**
	§	
	§	
	§	
Defendants.	§	**~~417~~ TH JUDICIAL DISTRICT**

DEFENDANTS' ORIGINAL COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants Society of Information Management, Dallas Area Chapter[1] ("SIM-DFW"), Janis O'Bryan ("O'Bryan") and Nellson Burns ("Burns") (collectively referred to as "Defendants") and file this Counterclaim, subject to Defendants' pending Motion to Transfer Venue, Against Plaintiff/Counter-Defendant Peter Beasley and would show the Court the following:

I.
FACTS

1. The Society of Information Management, founded in 1969, is a national, professional society of information technology leaders whose goal is to connect senior level IT leaders with peers in their communities, to provide opportunities for collaboration to share

[1] Defendant SIM-DFW is incorrectly named by Plaintiff/Counter-Defendant Peter Beasley. The organization's name is the Society for Information Management, Dallas/Fort Worth Chapter.

knowledge, provide networks, give back to local communities, and provide its members with opportunities for professional development.

2. Locally, SIM-DFW, is one off the largest chapters, with more than 300 members in 2018. SIM-DFW meets most months to engage in social networking and conversations about important managerial and technical issues facing IT practitioners.

3. Plaintiff/Counter-Defendant Peter Beasley was a member of SIM-DFW from September 2005 to April 19, 2016. In early 2016 a disagreement arose between Peter Beasley, then a member of the Executive Committee, and the other Committee members. The subject of the disagreement is undisputed: Peter Beasley believed, and continues to believe, that SIM-DFW is engaged in waste and mismanagement of the organization's finances because the Board determined that it was not going to fully fund his, or any Committee member's, budget request.

4. As a result of the ongoing disagreement with the Executive Committee, on March 17, 2016, Beasley, *ro se*, filed a lawsuit in the 162nd Judicial District Court, Dallas County, Texas, Cause No. DC-16-03141 ("Original Lawsuit") against SIM-DFW. Initially, Beasley chose not to serve the Original Lawsuit and instead informally provided it to SIM-DFW's Board via email and threatened to force SIM-DFW into costly and distracting litigation unless he could be promised a meeting wherein a "real option to reverse some of the final decisions" he'd been informed of was offered. However, in filing his lawsuit, Beasley confirmed that he had no intent to work within the existing group governance structure and further confirmed that he was a bad fit for the organization.

5. The Executive Committee, surprised at having been sued, evaluated a response to the lawsuit and discovered that in addition to aggressively seeking to control the organization, Beasley was using the organization to solicit business from members — a violation of the rules of

the organization. He also violated other SIM-DFW rules, including binding SIM-DFW to a monetary obligation in excess of the budgeted amounts for a meeting he organized, and other *ultra vires* acts. The Executive Committee decided that the violations supported good cause for expulsion and called a meeting to consider his expulsion from SIM-DFW.

6. In response to receiving notice of the expulsion meeting, Plaintiff made good on this threat to engage SIM-DFW in litigation and improperly secured an *e arte* TRO preventing SIM-DFW from moving forward with a planned meeting. He did this even though he'd been advised that SIM-DFW was represented by Peter Vogel and after engaging in several emails with Mr. Vogel regarding a potential informal mediation. Beasley then formally served his now amended claims against SIM-DFW and, in a move that can only be described as harassing and vindictive, added Janis O'Bryan, then –President of SIM-DFW, in her individual capacity as a defendant.

7. From these beginnings, Beasley and SIM-DFW (and various individual Executive Committee members) have been engaged in nearly two years of litigation. For much of the last two years Peter Beasley has chosen to remain *ro se*. But at various times he has retained the services of counsel — typically to respond to or argue a specific motion. The Original Lawsuit ended when his last set of attorneys (Eric Fryar and Christina Richardson of the Fryar Firm) filed a non-suit without prejudice of his claims against SIM-DFW and the claims of his company, Netwatch Solutions, against Nellson Burns, a Board Member, 2017-2018 President of SIM-DFW, and a customer of Netwatch Solutions.

8. After the October 5, 2017 non-suit was filed, the day before the responses to SIM-DFW and Nellson Burns's motions for summary judgment were due, SIM-DFW filed a motion seeking Rule 13 and CPRC Chapter 10 sanctions against Beasley and *all* of his attorneys.

The Dallas County Court held a hearing on October 31, 2017 and expressed an intent to deny SIM-DFW's requested sanctions but asked the attorneys to provide supplemental briefing on the issue of whether or not, in light of the timing of the non-suit and the inferences that could be drawn from Beasley's litigation behavior, good cause existed to declare SIM-DFW the prevailing party on Beasley's Declaratory Judgment Act Claims.

9. The requested briefing was provided and the Court continued the hearing on the Motion for Sanctions to November 3, 2017. By order of the same date the Court declared SIM-DFW a prevailing party and awarded SIM-DFW $211,032.02 in attorneys' fees.[2]

10. Five days later, Beasley's attorneys were fired and Beasley, again *ro se*, began an onslaught of motions practice. Filing multiple motions to recuse and disqualify the Honorable Judge Maricela Moore of the 162nd Court and attorney Peter Vogel (all denied), an *e arte* motion seeking a continuance of the hearing on his motion to recuse and disqualify Judge Moore (denied), two Petitions for Writ of Mandamus seeking to overturn the November 3rd Order (denied), a motion to modify the final judgment (denied), a motion seeking sanctions against SIM-DFW's attorneys (denied), and a Bill of Exceptions (denied).

11. While filing these harassing motions in Dallas County Civil District Court, Beasley also voluntarily dismissed an appeal filed by his former attorneys, filed a second appeal, and, ***incredibly***, filed this lawsuit in Collin County re-urging claims that had already been brought in Dallas County **including those same Declaratory Judgment Act claims for which SIM-DFW has been declared a prevailing party**!

[2] See, Order attached hereto as **Exhibit A**.

12. Beasley's remedy to challenge the November 3, 2017 Order granting attorneys' fees and declaring SIM-DFW a prevailing party on Beasley's Declaratory Judgment Act claims is appeal. His attempts to re-litigate those same claims, and dispute the attorneys' fees award by filing the current lawsuit in Collin County is an abuse of everything that our judicial system represents.

II.
COUNTER-CLAIMS

DECLARATORY JUDGMENT SUPPLEMENTAL RELIEF

13. Defendants/Counter-Plaintiffs request that this Court enter a Declaratory Judgment pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE Section 37.011 that provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper..

14. Defendants/Counter-Plaintiffs request that this Court enter an ORDER confirming that Defendant SIM-DFW prevailed on Beasley's Declaratory Judgment Act Claims as pled first in Dallas County and now re-pled in Collin County. Specifically, SIM-DFW seeks that this Court, consistent with the Dallas County District Court's November 3, 2017 Order, declare as follows:

a. Beasley's April 19, 2016 expulsion from SIM-DFW was consistent with SIM-DFW's Bylaws, did not violate any due process protections under the Texas Constitution, and did not violate any applicable provision of the Texas Business Organizations Code;

b. The actions of the SIM-DFW Board of Directors taken after April 19, 2016 were performed with all necessary formalities and consistent with the SIM-DFW Bylaws and are not subject to ratification by Beasley, a non-member; and

c. SIM-DFW's efforts to provide philanthropy are consistent with the SIM-DFW Bylaws and SIM-DFW's Articles of Incorporation to the extent such philanthropic giving is approved by the SIM-DFW Board of Directors.

15. The clarification of the Dallas County District Court's November 3, 2017 Order is necessary to prevent further attempts by Counter-Defendant Beasley to continue to litigate issues related to his April 19, 2017 expulsion from SIM-DFW.

16. Pursuant to Chapter 37 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Defendants/Counter-Plaintiffs request that this Court award all reasonable attorneys' fees incurred in this case and through any appeal of this matter by Beasley to Defendants/Counter-Plaintiffs.

DEFAMATION PER SE

17. Defendant/Counter-Plaintiff Nellson Burns has been pursued relentlessly by Beasley. Burns was initially named a defendant in the Dallas County lawsuit in June 2016 and then in February 2017, those claims were dismissed by Beasley. Only weeks later, Beasley's company, Netwatch Solutions, intervened in the Dallas County lawsuit and sued Burns individually for allegedly tortiously interfering with Burns's then-employer's contract with Netwatch Solutions.

18. The intervention claim never had any merit. Burns, the then-CIO of his company, could not tortiously interfere with his own company's contract with Netwatch Solutions. Burns's company was forced to retain counsel and participate in discovery and tellingly confirmed with Netwatch's counsel in July 2017 that there could be no tortious interference claim against Burns in the context of his role with Netwatch because (1) no contract between the company and Netwatch was terminated and (2) it was the poor judgment demonstrated by Beasley in pursuing

the discovery from Burns's company, and not any act or omission committed by Burns, that led to the company terminating all commercial relationships with Netwatch.

19. After the claims against Burns were non-suited, Burns left his company for another opportunity. However, Beasley's harassment of Burns did not stop. At multiple times in writings to Burns's colleagues in the IT industry, Beasley has alleged that Burns was "terminated" due to his tortious interference with the contractual and business relationship between Burns's then-employer and Netwatch.

20. Specifically, Beasley has made the following defamatory statements to Burns's colleagues and professional contacts in the IT industry:

a. "Nellson Burns is destroying the Dallas SIM Chapter and is wasting its assets for the sole purpose to hide his bad acts."

b. "Nellson has now been fired from [his former employer] because of how he needlessly embroiled his employer in this conflict."

c. "Sworn depositions from [Nellson Burns's former employer's] VP of Internal Audit proved that Nellson Burns lied to his corporate audit department about me and this conflict with SIM."

d. "[Nellson Burn's] staff also swore that Nellson Burns lied to them too."

21. Each of the above-statements is an assertion of fact that is objectively verifiable. Yet, Beasley has chosen, out of malice, to broadcast and publish these statements to colleagues and professional contacts in the IT industry in an attempt to harm Burns in his office, profession, and occupation.

22. Alternatively, Beasley has defamed Burns by innuendo or by implication by omitting material facts or juxtaposing facts in connection with the above statements.

23. Burns has suffered general damages as a result of Beasley's defamatory statements. Accordingly, Burns asks this Court to award his general damages, to be established at trial, pre and post-judgment interests, and costs of court in excess of $20 as allowed by Tex. R. Civ. P. 137.

III.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiffs' pray that Counter-Defendant be cited to appear and answer herein, that upon final trial and other hearing of this cause that Counter-Plaintiffs' recover damages from Counter-Defendant in accordance with the evidence and as the jury deems them deserving, that Counter-Plaintiffs' recover costs and attorneys' fees, interest, both pre-judgment and post-judgment, as allowable by law, and for such other further relief, both general and special, both in law and in equity, to which Counter-Plaintiffs' may be justly entitled.

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI

/s/ Soña J. Garcia

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served pursuant to TEXAS RULES OF CIVIL PROCEDURE 21 and 21a on March 2, 2018.

/s/ Soña J. Garcia
Soña J. Garcia

CAUSE NO. DC-16-03141

PETER BEASLEY,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER,	§	
	§	
	§	
Defendant	§	**162ND JUDICIAL DISTRICT**

ORDER GRANTING ATTORNEY'S FEES TO DEFENDANT AS PREVAILING PARTY ON DECLARATORY JUDGMENT CLAIMS

On November 3, 2017, Defendant's Supplemental Motion for Sanctions seeking to have Defendant declared a prevailing party and request for attorneys' fees came on for hearing. The Court, having considered the pleadings, evidence, and arguments of counsel, is of the opinion that the Defendant's Motion should be **GRANTED**.

Based on the evidence presented and the procedural history of this lawsuit, the Court makes the following findings and conclusions:

1. Plaintiff filed certain declaratory judgment claims on April 15, 2016.
2. Defendant moved for summary judgment on those claims.
3. The hearing on the motion for summary judgment was scheduled for October 12, 2017, making Plaintiff's response due on October 5, 2017.
4. On October 5, 2017, in lieu of filing a response to the motion for summary judgment, Plaintiff nonsuited his entire case.

5. The following factors support a finding that the nonsuit was filed to avoid an unfavorable ruling on the merits:

   (a) the timing of the nonsuit;

   (b) the strength of the motion for summary judgment;

   (c) the failure to respond to the motion;

   (d) the Plaintiff's prior litigation history, including a dismissal of all claims after resting his case during trial, which dismissal he then appealed to the Dallas Court of Appeals[1]; and

   (e) Plaintiff's conduct during this very contentious litigation, including his conduct as a *pro se* party and as a Plaintiff in conjunction with five different appearances by lawyers, involving the resources of eight (8) different judges in six (6) different courts.

6. The reasonable and necessary attorney's fees and costs incurred by Defendant in defense of the declaratory judgment claims is $ 211,032.02

IT IS THEREFORE ORDERED that Defendant is declared the prevailing party on Plaintiff's declaratory judgment claims and that, pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 37.009, Plaintiff Peter Beasley is hereby **ORDERED** to pay Defendant's reasonable and necessary attorney's fees and costs in the amount of $ 211,032.02

[1] *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, in the Court of Appeals for the Fifth District of Texas at Dallas, No. 05-15-00156-CV (September 20, 2016)

SIGNED this 3 day of ~~October~~ November, 2017.

Presiding Judge

Tab G

FILED
DALLAS COUNTY
4/20/2018 12:51 PM
FELICIA PITRE
DISTRICT CLERK

DALLAS COUNTY DISTRICT CLERK
FELICIA PITRE

Sacheen Anthony

NINA MOUNTIQUE, CHIEF DEPUTY

4/20/2018

Peter Beasley
pbeasley@netwatchsolutions.com

Cause No. DC-18-05278 44th District Court (COLLIN 417-05741-2017)

Peter Beasley vs. Society of Information Management, Dallas Area Chapteret al

Dear Peter Beasley

In Accordance with the ***Rule 89 of the Texas Rules of Civil Procedure***, you are notified that a Transfer of the referenced case to a District Court of Dallas County, Texas has been completed.

The filing fee of 292.00 is due and payable within thirty days from the date of this letter. If the filing fee is not paid within 30 days, a motion to rule for cost will be filed.

Make payment to: Felicia Pitre, District Clerk 600 Commerce Street Ste. 101, Dallas, Texas 75202. Attention File Desk.

Please put the cause number on your check and send it with a copy of this letter. For further assistance, please direct all calls to the transfer desk at (214) 653-6548 of the Civil/Family District Clerk Office.

Sincerely,

SACHEEN ANTHONY, DEPUTY

Cc:

Tab H

REPORTER'S RECORD
VOLUME 3 OF VOLUME 3

TRIAL COURT CAUSE NO. DC-18-05278-J
COURT OF APPEALS NO. 05-19-00607-CV

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
8/23/2019 1:38:00 PM
LISA MATZ
Clerk

PETER BEASLEY,	)	IN THE DISTRICT COURT
Plaintiff,	)	
VS	)	DALLAS COUNTY, TEXAS
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, ET AL,	)	
Defendants.	)	191ST JUDICIAL DISTRICT

Motion for Sanctions
Motion to Show Authority
Motion to Set Hearing

On the 7th day of August, 2019, a hearing was heard in the above-entitled and numbered cause, and the following proceedings were had before the Honorable Gena Slaughter, Judge Presiding, held in the 191st District Court, Dallas County, Texas:

Melba D. Wright, Texas CSR #4666
Official Court Reporter, 191st Judicial District Court
Proceedings reported by Stylus stenotype machine;
Reporter's Record produced by ProCAT Winner XP
computer-assisted transcription

A P P E A R A N C E S:

FOR THE PLAINTIFF, PRO SE:

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Foley Gardere Foley & Lardner, LLP
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Dallas, Texas 75201

(214) 999-4422

ALSO PRESENT:

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SBOT #: 08093970
Mr. Andrew S. Gardner
SBOT #: 24078538
Vaughan & Ramsey
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Suite 430
Arlington, Texas 76006

(972) 262-0800

Index

Motion for Sanctions
Motion to Show Authority
Motion to Set Hearing

August 7, 2019

PLAINTIFF'S WITNESSES:	DX	XE	RD	RX	VOL
None.					

DEFENDANT'S WITNESSES:	DX	XE	RD	RX	VOL
None.					

EXHIBIT INDEX

PLAINTIFF'S	OFFERED	ADMITTED	VOL
None.			

DEFENDANT'S	OFFERED	ADMITTED	VOL
None.			

P-R-O-C-E-E-D-I-N-G-S

(9:09 a.m.)

THE COURT: Good morning. We are on the record in Cause No. DC-18-05278, Peter Beasley versus Society of Information Management, Dallas Area Chapter, et al.

May I have the parties announce on the record at this time? Let me know your name and who you represent.

MR. BEASLEY: Peter Beasley representing myself for the plaintiff.

THE COURT: All right. Thank you.

MS. RAMSEY: Daena Ramsey representing myself.

MR. GARDNER: Andrew Gardner representing myself.

MS. GARCIA: Sona Garcia on behalf of defendants.

MR. VOGEL: Peter Vogel on behalf of the defendants.

THE COURT: I understand what is set today is a motion for sanctions, which has been filed by the plaintiff; is that correct, Mr. Beasley?

MR. BEASLEY: Yes, there are two motions -- three motions set for today, a motion for

sanctions, motion to show authority, and a motion for a hearing to set a hearing.

THE COURT: Okay. Question for you, Mr. Beasley: Have you filed or paid the applicable fee with respect to being found to be a vexatious litigant?

MR. BEASLEY: The fee?

THE COURT: Uh-huh.

MR. BEASLEY: You mean the bond?

THE COURT: Correct.

MR. BEASLEY: No. That was in -- yeah, no.

THE COURT: Okay. And do you understand that you can't file anything until that is paid, that bond is paid, that that particular order is saying that in order to proceed in Court, if you're going to file any additional motions after that particular order, that you would have to pay that bond in which to do so?

MR. BEASLEY: No, I did not understand that and --

THE COURT: That is the case.

MR. BEASLEY: Documents like the motion for new trial on findings of fact and conclusions of law, Ms. Ramsey, my attorney, has filed documents, so

I understand that order prevents me from filing another lawsuit, without permission, and I understand that Judge Slaughter --

THE COURT: Well, it essentially prevents you from filing anything further, without permission, until that particular bond is paid.

MR. BEASLEY: I don't understand it that way. Again, even a notice of an appeal would be something to file. Certainly that order can be appealed, and that'll be a final appeal, a notice of appeal.

THE COURT: What are you trying to sanction, what conduct are you trying to sanction today?

MR. BEASLEY: My former attorney, Ms. Ramsey and Mr. Gardner. They have appeared in this matter, without authority, so there is a motion for them to demonstrate their authority to appear, and then also sanctions for filing documents when they didn't have the proper authority.

THE COURT: All right. Anything you-all would like to say on the record with respect to what the Court has represented in terms of the bond not being paid, and the understanding that no further documents might be filed in this Court until that

particular bond is paid?

MR. RAMSEY: I have no response to that, Your Honor.

THE COURT: Okay. Mr. Vogel?

MR. VOGEL: That's my understanding as well, Your Honor. And let me also add, with regards to these three pending motions, as far as I can tell, nothing has been referred from Judge Slaughter to this Court to even have to get an order to rule on any of the motions that are pending here.

THE COURT: Well, as we know, Judge Slaughter is out --

MR. VOGEL: I understand that.

THE COURT: -- to even have that, so I am --

MR. VOGEL: Or any other visiting Judge, I'm sorry.

THE COURT: Correct.

MR. VOGEL: In other words, as far as I know, there has not been a referral by any District Judge in this county for you to consider any of these three motions.

THE COURT: Correct. Correct.

MR. VOGEL: And without that authority, I don't think that you could conduct a hearing today.

THE COURT: Okay. All right. Mr. Beasley?

MR. BEASLEY: With the Court's ruling and opinion that I can file nothing, could the Court at least enter an order to that effect, that I cannot file anything?

THE COURT: Well, we have two things occurring right now.

First, you have this order out there declaring you as a vexatious litigant, and it indicates until a bond is paid, until you pay that particular bond, you cannot continue to file things as it relates to this lawsuit, or as it relates to others, so that's one thing.

The second thing, as an Associate Judge, as Mr. Vogel has pointed out, I have matters that are referred to me from a District Court.

Judge Slaughter is in a unique position this particular week, she's out, she's had a death in her family, and I have been sitting for her Court trying to manage those things that I can so that when she does return, she's not so overwhelmed with things that did not get done in her absence. And so a referral has not been made to me. You will have to set this before Judge Slaughter, but you need to pay

attention to or take a look or read that particular order that declares you a vexatious litigant so that you understand what you may do from this point forward.

MR. BEASLEY: I've unfortunately have read it too many times, and nowhere does it say I cannot file anything more. Now, maybe there's some case law that the Court is referring to, but that order nowhere says I cannot file anything further in this lawsuit.

THE COURT: Okay. You may want to have a lawyer go over it, review it with you. I don't know if you've have an opportunity to do that but, historically, when someone has been declared a vexatious litigant, until that bond is paid, they are not able to file anything else in this particular courthouse.

MR. BEASLEY: Not even a notice of appeal?

THE COURT: Well, I can't give you legal advice. So that's one of the downsides of representing yourself.

What I'm telling you is, you might want to take a look at that order again, you might want to have a lawyer to review it, to explain to it you, but

I'm not in a position to give you legal advice. Okay?

So the three motions that you have set today, they will not be going forward.

MR. BEASLEY: Okay.

THE COURT: Okay?

MR. BEASLEY: All right.

THE COURT: All right. That concludes our hearing. Thank you.

MS. RAMSEY: Thank you, Your Honor.

MR. VOGEL: Thank you, Judge.

MS. GARCIA: Thank you, Your Honor.

(Off the record - 9:15 a.m.)

C E R T I F I C A T E

THE STATE OF TEXAS)

COUNTY OF DALLAS)

I, Melba D. Wright, CSR, Official Court Reporter in and for the 191st Judicial District, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and was reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $125.00 and was paid by the Plaintiff, Mr. Peter Beasley.

Witness MY OFFICIAL HAND on this, the 15th day of August, 2019.

/s/ Melba D. Wright
Official Court Reporter
Expiration Date: 12/31/19
Texas CSR NO: 4666

191st Judicial District Court
600 Commerce Street
Seventh Floor
Dallas, Texas 75202

(214) 653-7146
wrightmelba@msn.com

Tab I

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 16-03141

PETER BEASLEY	)	IN THE DISTRICT COURT
	)	
vs.	)	DALLAS COUNTY, TEXAS
	)	
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER	)	162ND JUDICIAL DISTRICT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND PLEA TO THE JURISDICTION

On the 17th day of July, 2017, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Maricela Moore, Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by computerized stenotype machine.

EXHIBIT
A
1234

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Attorney for Defendants

P R O C E E D I N G S

THE COURT: Cause No. DC-16-03141. Counsel, if you'll make your appearances.

MS. RICHARDSON: Christina Richardson for plaintiff Peter Beasley.

MR. VOGEL: Your Honor, Peter Vogel on behalf of the defendants Society for Information Management, Dallas Area Chapter. And also with me today is my colleague Haleigh Jones who is an associate at Gardere Wynne Sewell. And also the current president of the SIM chapter, Nellson Burns who's been here before as well as Janis O'Bryan, the former president of SIM.

MR. BRAGALONE: Bob Bragalone here for the defendants also.

THE COURT: Okay. We are here on a motion for summary judgment and I believe also a plea to the jurisdiction; is that right?

MR. VOGEL: Yes, Your Honor.

MS. RICHARDSON: Yes, Your Honor.

MR. VOGEL: And I believe they're intertwined because my sense is that the plea to the jurisdiction has to do with our motion for summary judgment.

THE COURT: Right. And I just want to

make clear that there was not a response to the plea to the jurisdiction filed; is that right?

MR. VOGEL: Your Honor, we filed last -- yes, Your Honor, we did. We filed it on July 12th. We filed one document that was in reply to the support for motion to summary judgment. A response to their evidentiary objections and to the plea to jurisdiction.

THE COURT: I'm sorry. I did not read that last part. I have that in front of me and I have read it. I just didn't look at the last couple words of the title; it was so long.

MR. VOGEL: Okay. Well, Your Honor, we included.

THE COURT: But I do have it.

MR. VOGEL: We included that in the notebook.

THE COURT: Yes, and I have the notebook in front of me.

MS. RICHARDSON: And, Your Honor, I believe that if the plea to the jurisdiction, which challenges the existence of defendant's claim is granted, then defendant's claim doesn't exist and the motion for summary judgment would not -- would become moot.

THE COURT: Well, it sounds like there's an agreement by the parties that these are intertwined.

MS. RICHARDSON: Correct, yes.

THE COURT: And so a ruling on one does affect the fatality of the other.

MR. VOGEL: Well, Your Honor, I mean, just having done this a few times, my expectation is more likely than not that you're going to take this under advisement to consider this. And since we set this motion for hearing, I would like to go ahead and go first and then you can consider the jurisdictional issues. As I say I think they're intertwined.

THE COURT: I agree. And, Mr. Vogel, I was intending to allow defendants to proceed on their summary judgment first given that I think it was set and then there's agreement to allow the addition of the plea to the jurisdiction to the hearing.

MR. VOGEL: Right. That's correct.

THE COURT: And so, yes. We will let you speak first.

MS. RICHARDSON: Your Honor, I hate to come before you for the first time and nitpick, but we filed our plea to the jurisdiction before their

motion for summary judgment.

THE COURT: That was not what I was referring to. I think I was -- what I said was I think that they set this for hearing. I believe that the motion for summary judgment was set for hearing and then your motion was added to their hearing date. That's how it shows up here, I.f that's not correct please let me know.

MS. RICHARDSON: I won't disagree with Your Honor on that.

THE COURT: Okay. Yeah. I have on here that it was set for summary judgment and then there was an agreement to add the plea to the jurisdiction afterwards.

And so, Mr. Vogel, with that I will let you proceed.

MR. VOGEL: Thank you, Your Honor.

Judge, I know that this is an unusual motion that we have before you or I should say that the declaratory judgment that we're asking for is an unusual hearing for you to be considering because the reality of what we got here, I think, is that Peter Beasley has demonstrated for many years that he's a vexatious litigant. And I think that the evidence we presented clearly shows the Court that.

In our exhibit A, among other things, in Mr. Beasley's February deposition, he confessed that he filed a criminal complaint against Judge Koons. The exhibit B are Judge Koons' order for recusal. Among other things Judge Koons stated that he has a firm opinion that Peter Beasley cannot be believed under oath.

THE COURT: Let me keep this along a question that is before -- in my mind. Before we get into the merits of whether or not Mr. Beasley is a vexatious litigant as that term is defined by statute, because it sounds like that's where your argument is going.

MR. VOGEL: Not necessarily, Your Honor.

THE COURT: Well...

MR. VOGEL: I guess what I'm saying, Your Honor, is the statute look -- theoretically, we had 90 days from the time the case was originally filed under that statute to make a claim that Mr. Beasley was a vexatious litigant. For reasons -- a number of different reasons that did not occur. This was before you took over the bench. That did not happen.

And we made a decision that we were

looking for you to make a declare -- grant our motion for declaratory judgment that Mr. Beasley was a vexatious litigant. That -- it's kind of not right in the middle of what the statute says, and I think that's part of what makes this a little bit different.

THE COURT: I'm having a hard time with the statutorily set out procedure for declaring an individual a vexatious litigant and why the Court should ignore that statute and allow parties to declare an individual with that term, which is statutorily defined under the Declaratory Judgment Act.

Have you ever seen -- is there any case that is going to be brought before me where a court has done this?

MR. VOGEL: Your Honor, we have not found a case that has done that.

THE COURT: Okay.

MR. VOGEL: But we also think that this isn't --

THE COURT: Mrs. Richardson, I'll let you have a chance. You can take a seat and we'll get to you in a second.

MR. VOGEL: But, Your Honor, I think

you're pointing out something that is fundamental to this. We think that this is an unusual circumstance, and there is a -- the way the statute is constructed leaves out an opportunity for you to be able to declare that someone is a vexatious litigant.

THE COURT: Well then I think it sounds like you have a problem that needs to be fixed by the legislature; isn't that correct?

MR. VOGEL: Saying it from a different perspective, Judge, if you were to declare -- ultimately if you granted our motion for summary judgment declaring that Mr. Beasley as a vexatious litigant, then it would allow us to take that decision and allow the presiding administrative judge to determine whether or not --

THE COURT: I'm glad you brought that up. So let's go straight to that point.

MR. VOGEL: No, because, Your Honor, I didn't bring it with me today, but we have a case, and I guess I could submit it to you, in the -- in Travis County where a judge granted a motion for someone to be declared a vexatious litigant and that person fought that in the Third Court of Appeals in Austin. They said that it was sufficient that the Court ruled that that person was a vexatious

litigant.

THE COURT: I'm not following your analogy.

MR. VOGEL: What I'm saying is it was a matter of counting how many cases that occurred in a certain time frame in that particular case.

THE COURT: Okay. I'm still not following your logic. What I wanted to say was, the point you just raised is one that is concerning to me.

So there's a statute that says there are criteria for declaring an individual a vexatious litigant. Under 11.054 if the Court determines that an individual is a vexatious litigant, there are consequences to that determination. Particularly, if that person wants to file something in Dallas County, they have to go and ask permission of Judge Molberg who is currently our administrative judge. And Judge Molberg has to give him permission.

Now under the relief you're requesting by this court, are you suggesting that I could declare under the Declaratory Judgment Act someone a vexatious litigant without going through the requirements of 11.054 and that person now has to go to Judge Molberg under 11.102?

MR. VOGEL: Yes, Your Honor. My sense is that if -- because this is an extraordinary -- we're asking for extraordinary relief.

THE COURT: Well, you're asking me to do something that the legislature has already codified a procedure for doing so. And it sounds like what you're saying is the codified procedure doesn't work for us here; so therefore, Court, ignore it and give us the relief anyway. And I don't know if I have the authority -- I'm not even talking the merits of your motion, which is why I wanted to stop you before we got sidetracked.

I'm not even talking the merits of your motion because quite frankly you could be right. This particular individual could be as defined by statute, a vexatious litigant. But I'm looking at the statute and I'm trying to find even some discretion the Court has to weigh the deadline for filing it or things of that nature.

For example, could a defendant file a motion for leave to file a motion under 11.054 after the statutory deadline?

MR. VOGEL: I don't think so, Your Honor.

THE COURT: Well, if a -- and

that's -- I would agree with you. I don't have that discretion. So if I don't have the discretion to grant the relief under 054 if it's not timely because that's not given to me, how can I find that authority under a different act?

MR. VOGEL: Well, I guess, what I'm saying, Your Honor -- where it strikes me because this is kind of what we had in mind when we filed this initially was whether or not -- let's say you granted our relief and gave a declaratory judgment that Peter Beasley was a vexatious litigant. If Judge Molberg did not find that that was acceptable under the statute, that would be his choice.

There are things that are presented to you in declare --

THE COURT: Well, hold on.

MR. VOGEL: No --

THE COURT: So now what you're basically saying is go ahead and grant my motion. And if you're wrong, don't worry about it, Judge Molberg will fix it for you. Well, I'm not inclined to leave it in Judge Molberg's hands. I'm quite capable of --

MR. VOGEL: I'm sure he would appreciate that.

THE COURT: -- of reading the law myself. He's not -- that's not the way this works.

So I need -- I am looking for some authority some place because I don't see an argument of equity in CPRC Chapter 11, Section 11. There is no equitable authority by a Court to declare someone vexatious if the statutory requirements are not met.

So I need some authority that gives me the right under equity to do what you're asking me to do. And the Declaratory Judgment Act does not get you there. It doesn't because that's an end run around this particular statute.

Does that make sense?

MR. VOGEL: I understand what you're saying; I'm not sure that I agree with that.

THE COURT: You don't have to agree. I'm the only one that they would call out if I'm wrong, but that's -- the law is the law. I can't sit up here and ignore the statute and make a decision based on equity unless there is law that allows me to do so.

There are some particular instances where the Court's are entitled to grant leave outside the statutory requirements. In equity if I find good cause, but that's specifically codified. On a motion

for leave, a Court on a finding of good cause, may, fill in the blank. That's what you're asking me to do. But I don't know if I have that authority under CPRC 11.054.

MR. BRAGALONE: Your Honor, may I be heard briefly on this?

THE COURT: Sure.

MR. BRAGALONE: I understand what the Court is suggesting, and I think that, with all due respect to Mr. Beasley, the legislature didn't contemplate Mr. Beasley when it passed that. The requirement of filing it within 90 days, I think this Court can hear the motion, hear the evidence, and then in a Rule 13 standard -- look, if we file this motion, the signer of that pleading has to authorize pursuant to Rule 13 that it's brought in good faith or with a good-faith basis for the extension or modification of existing law. And I think that has meaning here.

THE COURT: Well, hold on. Now you're doing something else. Now you're asking me to grant relief under Rule 13 where there is no motion under Rule 13 that is presented to me. And so again, if you want to file a motion under Rule 13, if you want to file a motion for sanctions based upon a pleading

that he filed and set that for hearing and ask me for particular sanctions that are authorized under Rule 13, we can have that hearing. But that's not where we are today.

MR. BRAGALONE: I think you misunderstood. It's probably my fault because I started with Rule 13. I'm not suggesting that we would affirmatively invoke Rule 13 in a sense to penalize. We've actually done that already and that motion will sit there until we believe our summary judgment has been granted and we're finally through with this case.

I'm suggesting that anybody, any lawyer who files a pleading has a Rule 13 obligation to certify that it's brought in good faith or with the good-faith belief of the extension or modification existing law. That phrase has meaning which means that I think a trial judge has the inherent authority to hear a motion. And even if it doesn't fit perfectly within existing law, find exceptions, perhaps in equity as you suggest, for why the law ought to apply differently in this case. And that's how the law gets modified from an appellate standpoint.

THE COURT: No. You don't modify a

statute by coming in here and saying the legislature did not contemplate the facts as I'm presenting them to you and therefore, Your Honor, ignore the statute because that is what I am charged. I took an oath of office not to do what I on one day think may be right without the limitation of, to follow the law.

I don't have the authority to simply ignore a statute because I believe that the legislature didn't consider all alternatives. They're not perfect. Shocking as it may seem, but they sometimes in Austin don't always think of all alternatives. It is not a Court's responsibility nor do I have the authority to fill in or revise a statute to fit a circumstance that they did not give me authority to do so. Because they could have.

They could have said, upon a showing of good cause, a Court may consider a motion under this section outside of the deadline upon a finding of good cause. Then we'd be sitting here having a evidentiary hearing on whether or not there's good cause and so we proceed.

MR. BRAGALONE: Well, there is Rule 1 also.

THE COURT: And let me just note one other thing. I think you said I misunderstood your

argument, but I still think I -- the argument you're making regarding Rule 13 is a good one. You already have a motion on file. If what you're saying is there is an obligation by any party, if they're pro se, Attorney, to sign a pleading saying it is filed in good faith, there is already a rule that protects defendants or plaintiffs, depending on who files the motion, when Rule 13 is violated. And you can take advantage of that. Sounds like you already have of that rule and get sanctions, if necessary.

MR. BRAGALONE: That's correct, Your Honor, and I do agree with that. I think the -- what the vexatious litigation statute is intended to do is to vet a particular claimant from filing the next lawsuit. And while Rule 13 may provide protection for defendant after the fact, after they've incurred the attorney's fees, litigated the case, won the motion on a dispositive motion, and then filed Rule 13. It doesn't protect an organization like SIM-DFW from the next lawsuit from the vexatious litigant. Their purpose is diverged there.

THE COURT: Well, let me tell you how it does. Let's say this lawsuit goes away in one form or fashion and your client is concerned well, Mr. Beasley is going to go ahead and just sue us

again. Immediately upon filing that lawsuit guess what motion you should file?

MR. BRAGALONE: This one within 90 days.

THE COURT: Thank you. Exactly. And so did the legislature contemplate it? I wasn't there, but maybe they did. And maybe that's because there is a belief, a Constitutional belief in the State of Texas that people should have access to courts. And what they don't want is people filing these kinds of motions well into a lawsuit because -- you would not do this, I know for a fact, but there are other lawyers who perhaps may do that as a defense strategic move to try to get someone declared vexatious way into the lawsuit because it's become so adversarial.

Trust me when I was on the other side of the bench, there were lots of cases that I was involved with where I would have loved to declare the plaintiff vexatious because it became such a harassing lawsuit, but I didn't have that right.

MR. BRAGALONE: I do agree with you, Your Honor. I think there is a problem with the statute. And it's very difficult obviously to get it addressed by the legislature when there's not that

many examples. There's not that many cases that go up on the court of appeals. One obvious pullout here is the 90 days because in most cases -- and we're talking about SIM-DFW on the rebound in a new lawsuit, what if it's a different organization that Mr. Beasley joins that has no idea about his history? In the first 90 days of that case being on file, they're trying to line up a lawyer, they're trying to get a retainer paid, they're trying to get an answer filed.

Ninety days goes by before you usually even serve discovery and have it back. And they wouldn't have done the exhaustive research that we did as a group to discover his litigation history. And that's why 90 is woefully inadequate and that's why we thought it was worth a shot to come before you and --

THE COURT: And I appreciate that.

MR. BRAGALONE: -- to present the motion and the facts to see if there was some way around the 90 days based on these facts. And the only reason why I invoke Rule 13 is because we have a good-faith basis to modify that section of the statute because it's impossible -- it's not impossible, it's very difficult to meet.

Most defendants aren't going to know Peter Beasley's litigation history in the first 90 days and so the statute is flawed in that since.

THE COURT: I think -- I hear what you're saying but let me tell you what. Representative Villalba, Anchia, Neave, Johnson, those are four excellent attorneys right here in the Dallas area. They're all representatives in the legislature. Call them and make that argument and tell them that this 90-day period does not work and this is why. But I can't do what they are charged with doing which is bringing that legislature to Austin.

I'm only charged with following the law as it's being given to me. And so my -- I'm not unsympathetic to your issue, I guaranty you you're not the only lawyer that feels this way, but it's beyond my authority to grant the relief you're requesting in this form under this cause of action.

MR. BRAGALONE: I understand that, Your Honor. We thought it was going to be a challenge, but we thought it was nonetheless worth bringing in the event that collectively all minds put together we could figure out a way, if there was a way, to grant it and then let it withstand appellate

scrutiny based upon the argument under Rule 13 that this is a good-faith motion that needed to be brought and it's the law that needs to change to fit the facts.

THE COURT: I hear you. But I also have to do what I'm bound to do by the law.

Mr. Vogel, looks like you have something to add.

MR. VOGEL: No, I just want to ask --

THE COURT: Okay. Sure.

MR. BRAGALONE: We have more than enough judges that are activist from the bench, and I applaud hearing from one who is not. And the idea of strictly following the laws --

THE COURT: Well, I'm a rule follower, you know.

MR. BRAGALONE: There's nothing wrong with that, Judge, and there's no apology needed for that.

THE COURT: An academic and a rule follower is probably not the most exciting person in this courthouse, but that's what you got.

MR. BRAGALONE: That's why you were elected.

MR. VOGEL: Your Honor, given your

statements today, I think we're going to withdraw our motion for summary judgment.

THE COURT: Okay.

MR. VOGEL: And I guess that would moot the plea to the jurisdiction at the same time.

I do have another matter, can I approach, Your Honor?

THE COURT: Oh, sure.

MS. RICHARDSON: Your Honor, if I could offer a few additions to what the Court has already said because you've made most of my arguments for me.

THE COURT: I think that now that the motion has been withdrawn, we -- it may be moot.

MS. RICHARDSON: But I came all the way up here just to talk to you.

THE COURT: Well, it was a pleasure to have you in the court.

Mr. Vogel, you may approach?

MR. VOGEL: Judge, this is another matter, but I guess it's reflective on our perspective about Mr. Beasley's bad-faith behavior. This is the original complaint -- the original petition that was filed last March 17th. And you can see pretty clearly the style of the case is Peter

Beasley, plaintiff. Society for Information Management, Dallas Area Chapter, defendant. If you look at tab No. 6 in our notebook.

THE COURT: Wait a second. Tab No. 6? I have five tabs.

MR. VOGEL: May I approach, Your Honor?

THE COURT: You may.

MR. VOGEL: Oh, I'm sorry. Mr. Beasley filed this on Friday. Well, this is not a file stamped copy. This is his response. I'm sorry. It's in your notebook. I'm sorry. That was the response to our plea on last Wednesday.

THE COURT: Okay.

MR. VOGEL: And you'll notice that the caption there is -- includes the names Janis O'Bryan and Nellson Burns.

THE COURT: Right.

MR. VOGEL: So he is who Mr. Beasley nonsuited in February, as you're well aware, and we think this is some form of harassment. Every time we get these pleadings, they both say to us we're not parties in this lawsuit anymore. Why are our names there?

THE COURT: Well, if you want to file

a motion to have the caption of the case clarified, then I'm happy to look at it. I'm sure that they would agree to it and you can submit an order. And we will make sure that parties that have been dismissed, do not appear any further.

MS. RICHARDSON: That was an accident, and it's taken care of.

MR. VOGEL: Well, Your Honor, I guess, there are other lawyers -- Mr. Davis, who's not here today. There's just a lot of other things going on in this case, and I just would -- I'll submit -- I'll submit a proposed order if you're agreeable to that.

MS. RICHARDSON: Well...

THE COURT: You're welcome to do so and I'm happy to consider it. That will definitely take care of those individuals appearing any further.

MR. VOGEL: Thank you, Your Honor.

THE COURT: Sure. Anything further?

MR. VOGEL: We don't have anything further today, Judge.

(Discussion off the record)

THE COURT: If there's nothing further, you-all are excused. Have a good day.

(End of proceedings)

STATE OF TEXAS
COUNTY OF DALLAS

I, Sheretta L. Martin, Official Court Reporter in and for the 162nd District Court of Dallas, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $150.00 and was paid by Peter Beasley.

WITNESS MY OFFICIAL HAND on this, the 10th day of September, 2018.

Sheretta L. Martin

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